CONSTRUCTIONS

BY THE

COURTS OF SUDDER DEWANNY & NIZAMUT ADAWLUT

OF THE

REGULATIONS AND LAWS,

FOR

THE CIVIL GOVERNMEN

OF

The whole of the Territories under the Presidency

OF

FORT WILLIAM IN BENGAL.

1/7

VOL 1

BENGAL SECRETARIAT LIBRARY

CALCUTTA:

PRINTED AND PUBLISHED BY G. H HUTTMANN,

AT THE BENGAL MILITARY ORPHAN PRESS

1840.

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CONSTRUCTIONS

OF THE

REGULATIONS OF GOVERNMENT

BY THE COURTS OF

Sudder Dewanny and Nizamut Adawlut.

No. 1.
1793 Reg. XVI. 1795. Reg XV. 1803 Reg XXI.

THE provisions contained in Regulation XVI. 1793, (extended to Benares by Regulation XV. 1795, and re-enacted for the ceded provinces by Regulation XXI. 1803,) determined by the Sudder Dewanny Adawlut, on the 3d of May, 1798, on reference from the Dacca provincial court, to refer to suits for money or personal property, and to disputed accounts arising out of suits for real property.

May 3, 1798.

No. 2.
1793. Reg. IV. Sec. 22.

The judge of *zillah* Shahabad was informed, that the Court do not consider Section 22, Regulation IV. 1793, to authorize or intend a sequestration of lands, till the judgment of forfeiture be confirmed.

May 2, 1799.

No. 3.
1793. Reg. III Sec. 14. 1803 Reg. II Sec. 18, Cl. 3.

The Court of Sudder Dewanny Adawlut, in reply to a reference from the Dacca provincial court, determined, on the 8th of April 1802, that a decree not enforced during a period of 12 years and upwards, might be put in execution, on application for that purpose, without a fresh suit; provided the party holding it explain satisfactorily the cause of the delay, and no valid objections are offered by the adverse party.*

April 8, 1802.

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* The application in the particular case which led to the above reference, was made after a lapse of 16 years. But see the case of Jugurnath Persbad Sircar, appellant, versus Radhanath Sircar and others, in which the Court determined that a decree for landed property should not be executed after the lapse of 13 years without a new suit. Sudder Dewanny Adawlut Reports, vol ii. page 280. See the Court's Construction of 28th October, 1813, No. 130, page 40, and Construction of 27th February 1822, No. 495, page 211.

No. 4.
1799
Reg VII.

Under Regulation VII. 1799, land belonging to a defaulter other than that for which the balance is due from him, cannot be sold; but his interest in that for which he owes a balance may be sold, and so may his chattels.

January 11, 1803.

No. 5.
1793
Reg XXXVI
Sec 15.
1803
Reg XVII.
Sec 13.

On a reference from the judge, *zillah* Tipperah, the Court determined, that in the absence of a register from the station, the judge cannot officiate for the registry of deeds, without deputation from the register, under Section 15, Regulation XXXVI. 1793.*

May 10, 1804.

No. 6.
1800
Reg. VII. Sec. 6

Extract from a letter from the Judge of zillah Nuddea, dated 28th March, 1805.

"The idea which hitherto prevailed in this district, is that if an obligation required to be written on stampt paper, be written on any other kind of stampt paper than that prescribed for such obligation, the collector, after receiving the prescribed penalty, is to cause the proper stamp to be affixed to it; but that if the obligation be written on plain paper, the collector's receipt, stating that the penalty has been paid, is sufficient: whereas it appears to me that whether the obligation be written on plain paper, or on any other kind of stampt paper, than that prescribed for such obligation, the collector, after receiving the prescribed penalty, is bound to transmit it to the superintendent of the stamp office, to have the proper stamp affixed thereto; and that unless the proper stamp is affixed to the obligation, it cannot be admitted in evidence in any court of justice, notwithstanding the collector may have certified that the prescribed penalty has been paid."

Extract from a letter of the Register of Sudder Dewanny Adawlut, in reply, dated 3d April, 1805.

1800
Reg VII. Sec. 6,
Clauses 2, 3.

"The Court are of opinion, that under clauses 2 and 3, of Section 6, Regulation VII. 1800, any instruments written on any other paper than the stampt paper prescribed for such instruments, which may be presented to the collector with the amount of the prescribed penalties, in order to render them legal instruments, ought, as directed in the said clauses, to be forwarded to the superintendent of the office, for the purpose of having proper stamps affixed thereto."

April 3, 1805.

No. 7.
1803.
Reg XLIX.
Secs. 2 and 3.

On a question from the judge of Behar, whether a judge is empowered to recall suits referred by him to an assistant judge, under Sections 2 and 3, Regulation XLIX. 1803, the Court resolved, that a judge is not specially invested, by the regulations, with a discretionary power of recalling suits which have been referred to an assistant judge; the Court declared their opinion, that a judge is not authorized to recall such suits, except in cases of

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* See also reference, acting judge Cawnpore, 25th July, 1807.

Ditto ditto, acting judge Cuttack, 19th August, 1813, No. 135, page 30. But new rules on this subject have been enacted by Regulation XIV. 1824.

evident necessity, arising from the absence of an assistant judge, or from the vacancy or discontinuance of the office of assistant judge.

June 5, 1805.

No. 8.

1801
Reg VI Sec. 7, Clause 6.

Superintendent of Eastern Salt Chowkees, plaintiff, *versus* Mirza Hossein Alee, *zemindar* of Kismut Buldkhal, defendant.

On the 31st of August, 1804, the judge of Tipperah adjudged a fine of 5000 rupees against the defendant, under Section 7, Regulation VI. 1801, for the illicit manufacture of salt within his *zemindarce*. The defendant petitioned Government, who called on the judge for a report; and understanding from him, that a doubt was entertained whether an appeal from the decision of the *zillah* courts, in such cases, was meant to be allowed, by the terms of the sixth clause of the above section, the following explanation of that clause was communicated to the Sudder Dewanny Adawlut, in a letter from the secretary to Government, 7th February, 1805.

"It appears to the Governor General in Council, that the only object of the rule contained in clause sixth, Section 7, Regulation VI. 1801, was ultimately to afford to individuals, who might be prosecuted for the illicit manufacture of salt, such relief as the circumstances of the case might appear to render reasonable and proper; and that it was by no means intended to preclude such persons from appealing from the decisions of the *zillah* judge to the superior court."

The Sudder Dewanny Adawlut concurred in the above construction of Section Regulation VI. 1801, and informed the Dacca provincial court accordingly.

July 27, 1805.

No. 9.

1793
Reg XLVI. Sec 3.
1802
Reg III Sec 6

On a reference from the Moorshedabad court of appeal, to ascertain by whom the subsistence of *pauper* plaintiffs or appellants, confined under the regulations for litigiousness in their plaints or appeals, is payable, the Court of Sudder Dewanny Adawlut determined, that as plaintiffs and appellants, in such cases, are not confined at the instance of the defendant or respondent, any requisite subsistence for them, during their imprisonment, should be paid by Government.

September 13, 1805.

No. 10.

1799
Reg. VII S. 29. Clause 5.

In a case before the Sudder Dewanny Adawlut, between Abdool Ruheem (purchaser of the lands of Tarnee Churn and Doorga Churn, sold in execution of a decree against their father Ramgovind Mitter), and Neelkunt Mitter and Hurgovind Mitter (former sharers with Ramgovind Mitter), who represented that their shares were ordered by the Calcutta provincial court to be delivered over to the purchaser, with the share of Ramgovind Mitter, under a construction of the fifth clause of Section 29, Regulation VII. 1799, that whatever be specified in the collector's proclamation as the property of the person whose lands are sold, must be delivered over to the purchaser, the Court adopted an opposite construction, viz. that it was not meant by this regulation, and would be evidently unjust, to dispossess

parties, in actual possession, and claiming right of property, of any part of the lands sold.*

September 18, 1805.

No. 11.

1793 Reg. IV Sec 13, and ditto Reg. XLVI. Sec. 3. and 1802 Reg. III. Sec. 6.

On a reference from the judge of *zillah* Behar, in the case of Gool Beebee, the Sudder Dewanny Adawlut informed him, that they did not consider women of rank, who are exempted by Section 13, Regulation IV. 1793, from personal appearance in a court of justice, to be proper objects of the discretionary rule contained in Section 3, Regulation XLVI. 1793, and Section 6, Regulation III. 1802.

September 26, 1805.

No. 12.

Do. do.

On a further reference on the same case, the judge was informed, "the Court do not consider the terms of Section 6, Regulation III. 1802, to have taken away the discretion given by Section 3, Regulation XLVI. 1793, but to explain and prescribe that the original rule is to be carried into execution, notwithstanding an appeal, providing, at the same time, for further imprisonment, in the event of litigious appeal."

October 18, 1805.

Reg. XLIX. Sec. 2, Clause 7.

The Sudder Dewanny Adawlut, on a reference from the judge and assistant judge of Hoogly, determined that, under the seventh clause of Section 2, Regulation XLIX. 1803, summonses to respondents, in causes decided by an assistant judge, and appealed to a provincial court, are to be forwarded by the *zillah* judge to the assistant judge, and executed by the latter.

It was at the same time determined, that the native officers appointed to attend an assistant judge, might, as far as their current duties admit, be employed to assist the officers of the *zillah* court, in transcribing the papers of cases appealed to the provincial court; but unless the establishment of the assistant judge be framed with a view to include this duty, it should not be imposed beyond what might be compatible with the discharge of their current duties.

November 15, 1805.

No. 14.

1793. Reg. XXXIX. 1795. Reg. XLIX. 1803. Reg. XLVI.

On a question from the judge of *zillah* Behar, whether a *pergunnah cauzy* could attest a deed for land situated in a *pergunnah* of which he was not the appointed *cauzy*, and executed out of his proper jurisdiction, the Court of Sudder Dewanny Adawlut expressed their opinion, that the attestation of a *cauzy* to a deed so executed, must be considered entirely unofficial, and of no greater weight than the attestation of other persons not given officially.

November 29, 1805.

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* Rules for enquiring into disputed claims of this nature have been laid down in Regulation VII 1825.

No. 15.
1793
Reg XV.
Sec 10

Beharee Loll, appellant; *versus* Mussummaut Fahmeedah, and Mussummaut Phekoo, respondents.

In the case of mortgage granted by respondents to appellant, antecedently to the 20th March, 1780, on condition, that appellant should retain possession and enjoy the profits of the lands mortgaged, until the principal sum lent should be repaid, (the annual profits of the lands being given in lieu of interest;) the Court dismissed the claim of appellant to recover the principal of his loan, and 12 per cent. interest, under Section 10, Regulation XV. 1793, and decreed that the parties should abide by their engagement, on the ground that the provisions and intention of that section, which were meant for the benefit of the mortgagers, are not applicable to this case, in which it appears that the mortgagee had received less than 12 per cent. profit from the lands.

December 18, 1805.

No. 16.
1793.
Reg XIX.
Sec. 4.

Government, appellant; *versus* Raja Bishoonauth and Sheeonauth, respondents.

Appellant sued respondents in the Dewanny Adawlut, *zillah* Moorshedabad, for the right of resuming the *lakheraj* of about 4,500 *beegahs* of land, held exempt from assessment, rated at eight annas per *beegah*, about 2,250 rupees per annum. The *zillah* court gave judgment in favour of Government for nearly the whole of the claim, but the provincial court amended the *zillah* decree, and adjudged about 4,000 *beegahs* of the land to be the valid *lakheraj* tenure of respondents. Government appealed from this decision to the Sudder Dewanny Adawlut, who determined the appeal to be admissible, on payment of the institution fee upon 20,000 Rs., being ten times the annual amount adjudged against the appellant by the decree of the provincial court.*

January 25, 1806.

No. 17.
1793
Reg XLIX.
1798
Reg. V. Sec 7.

Kishen Pershaud Nundee, appellant; *versus* Juggurnauth Shah, respondent.

Respondent complained against appellant for forcible dispossession from a *talook*, and obtained a judgment for possession, under Regulation XLIX. 1793. The decision of the *zillah* judge stated it to have been established, that the appellant had dispossessed the respondent *vi et armis*. Appellant appealed to the provincial court under Section 7, Regulation V. 1798, denying the forcible possession, and alleging the irrelevancy of Regulation XLIX. 1793, to the case. Provincial court rejected the appeal, on an inference drawn fron appellant's statement of the case, against the right of appellant to the *talook* in dispute. The Sudder Dewanny Adawlut considered this an insufficient ground for rejecting an appeal against the relevancy of Regulation XLIX. 1793, to judge of which, a perusal of the evidence offered in the *zillah* court is requisite, and therefore admitted an appeal.

January 29, 1806.

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* Government, in such case, does not sue for the property of the land, but for the public assessment demandable from it.—Vide Section 4, Regulation XIX 1793, &c.

No. 18.
1793.
Reg. VII. Sec. 32.

The terms of Section 32, Regulation VII. 1793, (relative to fines of pleaders for non-attendance,) were not meant to restrict the civil courts from imposing a less fine than the amount stated, in cases wherein they may consider a less fine adequate. Ruled by Sudder Dewanny Adawlut, on a reference from the Patna provincial court.

February 8, 1806.

No. 19.
1805
Reg II Sec. 14. Clause 3.

On a reference from Mr. Macan, judge of city Dacca (who had been register of that court), to ascertain whether he might try in appeal, as judge, causes formerly tried and decided by him as register, the Court of Sudder Dewanny Adawlut determined that as *ther is no provision* for the case in the regulations, he should hear the appeal, taking any new evidence which might appear requisite, and leaving the parties, if dissatisfied with his decision, to appeal therefrom to the provincial court.*

April 26, 1806.

No. 20.
1796
Reg. II Sec. 2.
1803
Reg VI Sec 19.

The Nizamut Adawlut, on a reference from the magistrate of Cawnpore, determined that complaints of petty criminal offences against British subjects, such as not to warrant commitment for trial before the Supreme Court, were not meant to be included in the provisions contained in Section 2, Regulation II. 1796, (Regulation VI. 1803, Section 19,) when the magistrate is not qualified to act as justice of the peace.

May 3, 1806.

No. 21.
1793
Reg IV Sec 8.
1803
Reg. III S 10
1806
Reg. II. Sec 12.

On a reference from the Patna provincial court, to ascertain by whom the allowance for subsistence to prisoners is payable, when parties are confined in execution of process for *vakeel's* fees, or the stamp duty on paper used for decrees, the Court of Sudder Dewanny Adawlut informed them that, in pursuance of the spirit and intention of Section 8, Regulation IV. 1793, the subsistence of prisoners confined under civil process, is payable by the persons at whose instance they are confined. That, therefore, in the cases stated, it is payable by the *vakeels*, if the party be confined for their fees, and at their instance, or by Government, if the confinement be ordered on account of the stamp duty, or other item payable to Government. That, however, in all cases, an application for the confinement of the party under civil process is requisite, and that in the first instance, after demand of the amount due, such process should be executed upon the property of the party from whom the amount is due, and the property of his securities.

June 25, 1806.

No. 22.
1793.
Reg VIII. Sec. 49.

On a reference to the Sudder Dewanny Adawlut, the judge of *zillah* Purnea was informed on the 6th August, 1806, that the reference in Section 49, Regulation VIII. 1793, to Section 18, instead of Section 19, of that regulation, is a mistake, as constructively corrected by clause fifth, Section 29, Regulation VII. 1799.

August 6, 1806.

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* But on the 27th August, 1819, No. 305, page 123, the Court gave a different construction of the rule.

No. 23.

1793
Reg XVII.
Sec 19, 20, 1799.
Reg. VII Sec. 9.
Benares, 1795.
Reg XLV.
Sec. 17, 18. 1800.
Reg. V Sec 9.
C. C. P 1803.
Reg XXVIII.
Sec. 17, 18.

On a reference to the Sudder Dewanny Adawlut, the judge of *zillah* Nuddea was informed on the 9th August, 1806, that the Court were of opinion, that the suits directed to be brought under Sections 19 and 20, Regulation XVII. 1793, and Section 9, Regulation VII. 1799, should be considered as summary; but that the defendant should be heard in his defence, and any evidence offered by him to refute the charge of resistance to attachment should be taken.

August 9, 1806.

No. 24.

1806
Reg. II. Sec. 11.

On a reference to the Court of Sudder Dewanny Adawlut, the provincial court of Calcutta were informed, on the 20th September, 1806, that the Court were of opinion, that Section 11, Regulation II. 1806, does not apply, except to persons confined under decrees of court, and of course is not applicable to persons in confinement at the instance of the collectors for arrears of revenue.

September 20, 1806.

No. 25.

1805
Reg. XII. Sec. 12.

On a reference to the Sudder Dewanny Adawlut, the judge of *zillah* Cuttack was informed, on the 27th September, 1806, that under Section 12, Regulation XII. 1805, clauses first and second of Section 18, Regulation VI. 1797, are extended to the province of Cuttack; and that by the words "pleadings and other papers which are considered to be of the nature of pleadings" in Section 12, Regulation XII. 1805, are meant to be included all miscellaneous petitions and answers, and other applications made under clause ninth, Section 17, Regulation VI. 1797.

September 27, 1806.

No. 26.

1793.
Reg XLIX.
Sec 3.
1795
Reg XIV.
1803.
Reg XXXII.

On a reference to the Sudder Dewanny Adawlut from the judge of *zillah* Mymensing, the courts of circuit were informed by a circular letter, under date the 27th September, 1806, that under Section 3, Regulation XLIX. 1793, (B. R. XIV. 1795. C. P. Regulation XXXII. 1803,) it was not meant that the inquiry into the fact of forcible dispossession should be *ex parte*, but only to restrict the inquiry to that fact alone, without any investigation as to the right of possession or property.

September 27, 1806.

No. 27.

Extract from a Letter to the Acting Judge of Zillah Bhaugulpore, under date the 21st February, 1807.

1805
Reg II. Sec 4.
Clause 1.

The Court are of opinion, that the process of distraint was primarily intended to enable landholders and farmers of land to realize their rents for the current year with punctuality; but the regulation does not restrict the process of distraint from being employed for arrears of a former year, provided the person upon whom the distress is levied continue to be an under-tenant of the distrainer.

February 1, 1807.

No. 28.

1793 Reg XLIX. Benares, 1795. Reg XIV. C. C. P 1803 Reg. XXXII

On a reference from the acting judge, *zillah* Nuddea, he was informed on the 28th February, 1807, that under the spirit of Regulation XLIX. 1793, the Court were of opinion, that complaints of violent dispossession from fisheries, tanks, &c. should be taken up under that regulation.

February 28, 1807.

No. 29.

1795 Reg XXVII Sec 2, and 1795. Reg I Sec. 3. Clause 6. Ben. 1793 Reg I Sec. 5 C. C. P 1803. R XXV S. 33 P. 1805. Reg IX. Sec. 23.

On a reference to the Sudder Dewanny Adawlut, the judge of *zillah* Mirzapore was informed on the 30th May, 1807, that the Court were of opinion, that Section 2, Regulation XXVII. 1795, is applicable in bar of claims preferred by *zemindars*, under clause sixth, Section 3, Regulation I. 1795, for the recovery of their estates from farmers, if the refusal of the *zemindars* to pay the assessment required of them be established; but that the case of actual refusal only, being provided for by Section 2, Regulation XXVII. 1795, it cannot be pleaded in any other case, and if the plea be offered by a farmer to prevent a *zemindar* from being put in possession of his estate, under clause sixth, Section 3, Regulation I. 1795, the proof of the plea must be on the farmer.

May 30, 1807.

No. 30.

1806. Reg II Sec 2. 1799 Reg VII. Sec 15. Benares, 1800. Reg. V Sec 14. C. C. P 1803 Reg XXVIII. Sec. 32

On a reference to the Sudder Dewanny, the register of the *dewanny adawlut*, *zillah* Purnea, was informed on the 18th July, 1807, that the Court were of opinion, that the notice directed by Section 2, Regulation II. 1806, is not applicable to cases of summary process provided for by Section 15, Regulation VII. 1799.

July 18, 1807.

No. 31.

1804 Regulation V.

In reply to a reference to the Sudder Dewanny Adawlut, the judge and magistrate of *zillah* Bareilly was informed, on the 1st August, 1807, that the Court were of opinion, that the provisions contained in Regulation V. 1804, were applicable to English writers, natives of India; and that their appointment and removal ought to be reported accordingly.

August 1, 1807.

No. 32.

1803 Reg XI. Bengal. 1793 Reg XXXIV Benares, 1795 Reg. XLVII.

On a reference from the acting judge of *zillah* Cawnpore, he was informed on the 1st August 1807, that the Court were of opinion, that persons amenable to his authority, who may sell rum, the manufacture of Bengal, without a license, are liable to the penalties prescribed by Regulation XL. 1803.

August 1, 1807.

No. 33.

1799 Regulation VII Benares, 1800 Reg V 1793. Reg XVII. and

The acting judge of Behar was informed, on the 21st January, 1808, that the Court were of opinion, that the rules contained in Regulation VII. 1799, as well as of Regulations XVII. 1793, and XXXV. 1795, relating to the power of landholders to proceed against their tenants for arrears of rent, being general, must be understood to apply to all claims

for arrears of rent, whether due from lands paying revenue to Government, or from lands held exempt from public revenue.*

January 14, 1808.

1795 Reg XXXV. C C P 1803. Reg XXVIII.

No. 34.

On a reference from the judge of Mymensing, relative to sureties for paupers under Sections 2 and 3, Regulation XLVI. 1793, the Sudder Dewanny Adawlut determined, that the responsibility of *hazirzamins* and their property, ceases on their death; but in the event of their absconding, notice to cause the attendance of the parties for whose appearance they are sureties, should be proclaimed at their houses, and in the public *cutcherree*; after which, on failure to produce the parties, the fees and costs demandable may be recovered from their property.

1793. Reg XLVI. Secs 2 and 3.

February 13, 1808.

No. 35.

In reply to a reference from the acting judge, zillah Juanpore, the Court determined on the 26th March, 1808, that the provisions of Section 14, Regulation V. 1800, are equally applicable to persons in possession of estates under deeds of mortgage, as to regular proprietors and farmers of land.

1800 Reg V. Sec 14. Ben 1799 Reg. VII Sec. 15. C C P 1803. Reg XXVIII. Section 32.

March 26, 1808.

No. 36.

In answer to a reference to the Sudder Dewanny Adawlut, the register of the zillah court of Cuttack was informed on the 18th May, 1808, that adverting to the provisions of clause 2, Section 14, Regulation II. 1805, as well as to the general spirit of that section, the Court were of opinion that the register is authorized to conduct to issue the summary inquiries referred to in the regulation during the absence of the judge.

1805. Reg II. Sec. 14, Clause 2.

May 18, 1808.

No. 37.

The Court determined, that as the rules contained in Regulation XVI. 1793, (extended to Benares by Regulation XV. 1795, and re-enacted for the ceded provinces by Regulation XXI. 1793), were not declared to be applicable to suits for landed property; and as Section 16, Regulation IV. 1793, strictly forbids a report of any matters of fact relating to depending causes, with the exception of cases in which special authority for that purpose is given by the regulations, the reference of a claim for landed property to arbitration is not authorized by the regulations.

1793 Reg XVI Benares, 1795. Reg. XV. 1793. Reg. IV. Sec. 16.

June 10, 1808.

No. 38.

On a reference to the Sudder Dewanny Adawlut, relative to the construction of Section 12, Regulation VII. 1793, the Moorshedabad provincial court were informed on the 22d June, 1808, that as no distinct rule is established for levying the fee of the second pleader entertained by parties under the above section, the Court were of opinion, that it

1793 Reg VII S 12. Benares, 1795 Reg XIII. Sec 2. C C P 1803 Reg X. Sec. 11.

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* The same construction was given on the 22nd of *May*, 1810, No. 61, page 14.

should be levied in common with other fees of pleaders, in conformity with the general rule contained in Section 10, and inserted in the decree as directed by Section 9 of the above regulation.*

June 22, 1808.

No. 39.

1793 Reg XLIX Benares, 1795 Reg XIV C. C. P. 1803 Reg. XXXII.

The judge of zillah Beerbhoom was informed on the 22d June, 1808, in answer to a reference regarding the construction of Regulation XLIX. 1793, that the provisions of that regulation are applicable only to cases of dispossession by force, amounting to a breach of the peace; and that in all cases, the fact of forcible dispossession is the only subject of the summary inquiry authorized by the above regulation, all matters of right being cognizable in the regular manner.

June 22, 1808.

No. 40.

1806. Reg XI. Sec. 14

Circular orders to the courts of circuit and magistrates respecting application for a military force made by a magistrate, under Section 14, Regulation XI. 1806. Magistrate to transmit to court of circuit copies of their report to Governor General in Council, and court of circuit to report their sentiments to Government, if circumstances appear to require it, but not to issue any direct orders to magistrate.

July 4, 1808.

No. 41.

1799. Reg. VII. Sec. 15. Benares, 1800 Reg V Sec 14 C. C. P. 1803 Reg XXVIII. Section 32.

In reply to a reference to the Sudder Dewanny Adawlut, the judge of zillah Jungle Mohauls was informed on the 13th September, 1808, that the Court were of opinion, that the whole of the provisions of Section 15, Regulation VII. 1799, are equally applicable to defaulting tenants and their *malzamins*, but they cannot be applied to the *hazirzamins*, unless the defaulters for whose appearance they are responsible abscond, in which case, the *hazirzamin*, as well as the *malzamin*, is answerable for what may be due from the defaulter, and may be proceeded against accordingly.

September 13, 1808.

No. 42.

Ditto ditto

In reply to a reference to the Sudder Dewanny Adawlut, the judge of zillah Purnea was informed on the 17th September, 1808, that under the provisions of Section 15, Regulation VII. 1799, as well as upon general principles of justice, a defaulting farmer is liable to be ousted from his farm at the end of the year for which an arrear of rent may be due from him, if he shall not discharge the same on demand. That the Court were further of opinion, that the proprietor of the land is authorized to oust his defaulting tenant, without application to the courts of justice, as declared by clause seventh, Section 15, Regulation VII. 1799, provided no violence be used, so as to bring the case within the provisions of Regulation XLIX. 1793.

September 17, 1808.

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* This construction has been superseded by Section 30, Regulation XXVII. 1814.

In reply to a reference to the Sudder Dewanny Adawlut, the judge of zillah Ramghur was informed on the 10th November, 1808, that the Court did not consider the rules contained in Sections 27 and 28, Regulation VI. 1800, to supersede those contained in Regulation I. 1794, as far as relates to the reward to be given to informers on the conviction of persons concerned in manufacturing or selling spirituous liquors, &c. without a license: that the Court, therefore, were of opinion, that a police *darogah* is entitled equally with other persons to one half of the penalty levied on conviction from such offenders, upon his information.

No. 43.
1794. Regulation I. Benares, 1795. Reg. XLVII. Section 1800. Reg. VI. Secs. 27 and 28, C. C. P. 1803 Reg XL Sec. 30.

November 10, 1808.

In answer to a query from the judge of zillah Jungle Mohauls, "Whether in the case of a party, at whose suit a debtor may be confined, having consented to discharge such debtor from confinement, on his executing an agreement to pay the amount of the debt by instalments, and such engagement having been acknowledged and accepted by the parties, and attested by their signatures, in presence of the judge; on failure of the performance of the conditions of such engagement, any process can be issued by the Court for enforcing its payment; or, if it be necessary, that a new suit be instituted by the plaintiff for the recovery of any claim which may be due under such agreement:" the Court of Sudder Dewanny Adawlut determined, on the 7th December, 1808, that the spirit and intention of Section 10, Regulation II. 1806, appear to include the above case, provided the *kistbundee* have been given in execution of a decree, and the enforcement of the decree have been suspended in consequence; but that if any payment under the *kistbundee* be alledged by the party or his surety, he should be allowed to prove the same, if not admitted by the opposite party.

No. 44.
1806 Reg. II. Sec. 10.

December 7, 1808.

The provincial court of Moorshedabad were informed on the 21st December, 1808, that Section 16, Regulation VIII. 1793, relates to *sudder mocurrereedars* holding *mocurreree* farms from Government, to the exclusion of the proprietors of the land; and that clause fifth, Section 29, Regulation VII. 1799, relates to under-tenants holding the lease of land at a fixed rent from the proprietors.

No. 45.
1793 Reg VIII Sec. 16 1799 Reg. VII. Sec. 29. Clause 5 Benares, 1800 Reg. V. Sec 26

December 21, 1808.

On a reference from the magistrate of zillah Rajeshahye, the Court of Nizamut Adawlut authorized attachment of lands adjudged by Magistrate liable to forfeiture for harbouring *dacoits* under Section 14, Regulation IX. 1808.

1808. Reg. IX. Sec. 14.

May 24, 1809.

A *futwa* must be taken on trial of convicts for escape under Section 9, Regulation LIII. 1803. Letter to second judge of Patna court of circuit.

No. 47.
1803. Reg LIII. S

June 13, 1809.

No. 48.
1793
Reg V. Sec. 28.

Appeals against decisions founded upon award of arbitration not to be dismissed under Section 28, Regulation V. 1793, without having been admitted. See Proceedings in case Davesepershaud Sein v. Indrajeet Sing.*

September 18, 1809.

No. 49.
1809.
Reg VIII Sec 9 1804.
Reg V Sec 10. 1807.
Reg XIV. Sec 8; and 1809 Reg VIII. Sec. 5

On a reference from the Benares court of circuit, the Nizamut Adawlut determined, on the 3d October, 1809, that under Section 9, Regulation VIII. 1809, the *naib cutwal*, *jemadar*, and *burkundazes* are to be appointed, and may be removed by the magistrate, on sufficient cause, without reference to the court of circuit: but the *jemadars* of the city of Benares being the *darogahs* of wards, the Court were of opinion that under Section 10, Regulation V. 1804; Section 8, Regulation XIV. 1807; and Section 5, Regulation VIII. 1809, they can only be nominated by the magistrate, for the confirmation of the court of circuit, and cannot be removed without the sanction of the latter.†

October 3, 1809.

No. 50.
1809.
Reg VIII. Sec 11

The Court at the same time observed, that under Section 11, Regulation VIII. 1809, it is incumbent on the magistrates to specify in the statements of their establishments the names of all native officers receiving ten rupees and upwards, whether the officers be appointed by the magistrate or by the court of circuit.

October 3, 1809.

No. 51.
1809
Reg VIII. Sec 7

The Court further declared, that the head scavenger on the magistrate's establishment, receiving upwards of ten rupees per month, can only be appointed or removed on a reference to the court of circuit under Section 7, Regulation VIII. 1809.

October 3, 1809.

No. 52.
1807.
Reg II. Sec. 3.

Extract from the Proceedings of the Court of Nizamut Adawlut, 4th November, 1809.

The third judge of the Patna court of circuit having sentenced a prisoner, under Section 3, Regulation II. 1807, to imprisonment for four years, without further adjudging him to stripes, *tushheer*, and branding, as prescribed by the above section, and having issued his warrant to the magistrate to carry such sentence into execution; the Court determined that the third judge's proceeding was irregular, and that he should either have adjudged the whole of the punishment above specified, or if he considered such punishment too severe, he should have submitted the trial with his sentiments for the sentence of the Court.‡

November 4, 1809.

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* This case was reported in the 1st vol of Sudder Dewanny Adawlut's Reports, page 288.

† The necessity for this construction has been superseded by the provisions contained in Regulation XVII. 1816.

‡ See also reference from the third judge of the Bareilly court of circuit, recorded 24th of September, 1812. *Banishment* not forming a part of the specific punishment prescribed for forgery or perjury, a judge of circuit is competent to add banishment to the sentence, or not, as he may deem proper.

No. 53.
1799
Regulation VII
Benares, 1800.
Reg. V.

On the 18th November, 1809, the Sudder Dewanny Adawlut, in reply to a reference from the Moorshedabad provincial court, determined that the regulations in force did not admit of a summary investigation and decision upon claims of recovery against the *nazirs* of the civil courts, in cases of alleged injuries to parties from neglect of duty or other misconduct; that the claimants in such cases must institute a regular suit, which should be tried and decided as speedily as possible; but that security might be taken from the *nazir* complained against to perform the judgment upon such claims.*

November 18, 1809.

No. 54.
1793.
Reg XIII.
Benares,
1795
Reg. XII.
C. C P 1803.
Reg XII.

The magistrate of Purnea was informed on the 21st November, 1809, that the Court did not consider the provisions of Regulation XIII. 1793, to preclude a criminal prosecution in cases of corruption, if there appear to be sufficient grounds for such a prosecution.

November 21, 1809.

No. 55.
1793.
Reg XXXVIII.
Section 3.
Benares, 1795
Reg XLVIII.
Sec 3
C.C P 1803.
Reg XIX
Section 3.

A circular order was written to the judges of the several civil courts, on the 28th of November, 1809, acquainting them, that the Court were of opinion, that the court of judicature are not authorized to give judgment in favour of any European for land situated without the limits of Calcutta, purchased, rented, or occupied without the sanction of the Governor General in Council; and that the Court were further of opinion, that previously to passing judgment against the European in such cases, he should be allowed an opportunity of applying for the sanction of Government.

November 28, 1809.

No. 56.
1793.
Reg XXVIII.
Section 7.
1797.
Regulation XI.
Sec 2.
C. C. P 1803.
Reg XVIII.
Section 7

On the 12th of December, 1809, the court of Sudder Dewanny Adawlut, in reply to a reference from the judge of Jessore, whether suits instituted by Indigo planters, being British European subjects, under the sum of 50 rupees against their *ryots*, could be tried by the native commissioners; stated it to be their opinion, that suits instituted by Europeans of the nature above specified, might be tried by the native commissioners on a reference from the *zillah* court, after the plaintiff should have executed the bond required by Section 7, Regulation XXVIII. 1793, and Section 2, Regulation XI. 1797.†

December 12, 1809.

No. 57.
1793
Reg XLVI.
Sec. 3
Benares, 1795.
Reg XXIII.
Sec. 2.
C. C. P. 1803.
Reg XIV.
Section 3.

The judge of the Jungle Mohauls having required information whether persons suing as paupers, whose suits, preferred under Regulation XLVI. 1793, might prove on trial groundless and vexatious, were liable to be committed to close custody *in the jail of the dewanny or foujdaree court* under Section 3 of that Regulation, was told on the 19th January, 1810, that the description of persons referred to in Section 3, should be confined in the *dewanny* jail.

January 9, 1810.

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* The Court had before determined, (on the 2nd of August, 1803,) that the *nazirs* of civil courts were not liable to pay the amount of sums due from persons who might escape from their custody, unless collusion on their part was proved.

† This construction superseded by clause two, Section 13, Regulation XXIII. 1814.

No. 58.
1793 Reg XIII. 1803 Reg. XII

Regulations XIII. 1793, and XII. 1803, whereby parties injured have the option, in cases of corruption and extortion, of instituting a civil action, declared by a circular order of the 18th March, 1810, not to preclude a criminal prosecution, whenever there may appear to be sufficient grounds for it; the prosecution also directed to be public, and to be conducted by the *vakeel* of Government.

March 13, 1810.

No. 59.
1805. Reg XIV Sec. 6.

Upon summary application, the Sudder Dewanny Adawlut decided, that a promise to pay a debt contracted by the Raja of Cojung, before the 14th October, 1803, such promise having been made subsequently to the said date, did not constitute ground of action.

Also correspondence with Government on the subject.

March 28, 1810.

No. 60.
1806. Reg II. Sec II.

In reply to a question submitted by the judge of the Jungle Mohauls, "whether the provisions contained in Regulation II. 1806, for the release of insolvent debtors, were to be considered applicable to cases of persons in confinement on account of demands of rent decreed under summary investigation, or whether the operation of those rules in favour of insolvent debtors, was limited to persons confined under decisions of the courts passed on regular suits;" the Court gave it as their opinion, on the 22d of May, 1810, that the provisions of the rule above quoted for the release of insolvent debtors, were applicable to cases of persons in confinement for arrears of rent under summary decrees.

May 22, 1810.

No. 61.
1793 Reg XVII 1795 Reg. XXXV C. C. P. 1803 Reg. XXVIII.

In a letter to the judge of the Jungle Mohauls, dated 22d May, 1810, the Court determined that the rules for distraint contained in these Regulations, being general, must be understood to apply to the rents of lands held exempt from the public assessment, as well as to the rents of lands subject thereto.*

May 22, 1810.

No. 62.
1809 Regulation VIII.

The Bareilly courts of appeal and circuit were informed on the 19th July, 1810, in reply to a reference made by them, whether, agreeably to Regulation VIII. 1809, they were competent to remove a native police or ministerial officer of their own accord, or whether a representation must be made in the first instance by the judge and magistrate; and also whether a single judge on the circuit, or a single judge at the *sudder* station, could exercise the powers vested in the whole court by the above Regulation; that the Sudder Dewanny and Nizamut Adawlut considered the courts of appeal and circuit in their collective capacity fully empowered, on sufficient ground, to remove, on their own motion, any of the officers whom, by Regulation VIII. 1809, they are competent to remove on reference from the judges and magistrates.

July 19, 1810.

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* See also No. 33, page 8

No. 63.
1810
Reg. VI. Sec. 4

The magistrate of Beerbhoom was informed, on the 26th July, 1810, that proprietors of *lakhiraj* lands and *durpuntee talookdars*, are exempt from the penalties prescribed by Section 4, Regulation VI. 1810, the provisions of which apply exclusively to a *sudder zemindar*, *talookdar*, or farmer.

The former are liable, under Section 5, to be punished on conviction of the offence mentioned in the preceding section, by fine and imprisonment, in addition to the punishment noticed in Section 3.

July 26, 1810.

No. 64.
1793
Regulation XL. Section 8.
Benares, 1795.
Reg. XXXI.
C. C. P. 1803.
Reg. XVI.

The provisions in Section 8, Regulation XL. 1793, and other regulations, which declared the native commissioners liable to prosecution in the civil court for corruption, or any unwarranted and oppressive act of authority, declared by the Court of Sudder Dewanny Adawlut, on the 11th August, 1810, to be not meant to prohibit a criminal prosecution, in such cases where the nature and circumstances of the offence may appear to call for it.

August 11, 1810.

No. 65.
1807.
Regulation IX. Sec. 19.

In reply to a letter from the acting magistrate of zillah Ramghur, requesting a definition of this section, the Court, on the 16th August, 1810, observed, that a magistrate was not authorized to pass a sentence in a single case of theft, of six months' imprisonment, with corporal punishment, and a fine commutable to a further period of confinement; that the punishment was specifically confined to 30 stripes of the rattan, and six months' imprisonment, and that should any objection exist to the infliction of the stripes, and the imprisonment for six months appear insufficient, the party should be made over to take his trial before the court of circuit.

August 16, 1810.

No. 66.
1810
Reg. XIII. Sec. 4, Clause 4.

The Dacca court of appeal having stated a query, whether under the fourth clause of Section 4, Regulation XIII. 1810, a single judge is competent to try and decide original causes instituted before the provincial court; were informed, on the 16th of August, 1810, that the Court considered a single judge authorized by the second clause of Section 2, Regulation XIII. 1810, to try and decide original suits, as well as appeals, and that the provision in the fourth clause of Section 4, Regulation XIII 1810, has reference to the possible completion of the trial before two or more judges, after having been commenced before a single judge.*

August 16, 1810.

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* This construction rendered unnecessary by the provisions of Regulation XXV. 1814, relating to the powers of single judges

No. 67.

1793 Reg VIII Secs. 59 and 63. Benares, 1795 Reg II, Sec 14 Clause 5th.

In reply to a reference from the judge of zillah Nuddea, he was informed on the 16th August, 1810, "That the existing regulations did not authorize any summary process in cases of complaints by *ryots* or other under-tenants, against landholders, or farmers, for refusing to grant *pottahs* or give receipts. And that on *ryots* or other tenants, (who may prefer complaints of the above nature against the landholders, or farmers,) establishing their claims to receipts or *pottahs* by regular suit, they would be entitled to receive them, as well as damages, from the party refusing, under the provisions of Sections 59 and 63, Regulation VIII. 1793.

August 16, 1810.

No. 68.

1810 Reg XIII Sec. 9, Clause 3d

On a reference from the provincial court of Benares, the Court of Sudder Dewanny Adawlut determined, on the 30th August, 1810, that clause third, Section 9, Regulation XIII. 1810, does not preclude a special appeal to the provincial court, from the decision of a *zillah* or city judge, in suits tried in appeal from the decision of a native commissioner, not having been referred to the *sudder ameen*.

August 30, 1810.

No. 69.

1808. Reg. XIII Sec. 2.

In reply to a reference from the provincial court of Patna, the Court of Sudder Dewanny Adawlut determined, on the 30th August, 1810, that a claim for land and mesne profits thereof, the produce of the land and the amount of the mesne profits being each less than five thousand rupees, but the aggregate of both exceeding that sum, is cognizable in the provincial court in the first instance under Section 2, Regulation XIII. 1808.

August 30, 1810.

No. 70.

1810 Reg. XIII Sec 2, Clause 4th

In answer to a query, submitted by the third judge of the court of appeal for the division of Patna, the Court determined, on the 29th November, 1810, that clause fourth, Section 2, Regulation XIII. 1810, must be construed, as restricting a single judge of a court of appeal from dismissing on default appeals from judgments or orders passed by himself, and as restricting a judge of a provincial court from sitting on the trial of appeals from judgments passed by himself, even in company with other judges.

November 29, 1810.

No. 71.

1803. Reg III. Sec. 9, and 1803. Reg XXVI.

On a reference from the provincial court of Bareilly, the Court of Sudder Dewanny Adawlut determined, on the 29th November, 1810, that no sale of land of whatsoever description (whether paying revenue to Government, or exempt from the payment of revenue,) should be made otherwise than through the Board of Revenue and collectors, in the manner prescribed by Regulation XXVI. 1803.*

November 29, 1810.

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* But see the provisions contained in Section 2, Regulation VII. 1825.

No. 72.
1808.
Reg. XIII

On a question, submitted by the third judge of the Patna court of appeal, "whether every case decided by the court of appeal, under Regulation XIII. 1808, should be appealable to the Sudder Dewanny Adawlut;" the Court, on the 13th December, 1810, declared their opinion, that under the spirit and intention of the regulation, all cases tried and decided in the first instance by the provincial courts, were appealable to the Sudder Dewanny Adawlut, although the amount or value, or the annual produce of the land, adjudged against the appellant, should be less than five thousand Rupees; and that, accordingly, all appeals duly preferred in such cases should be admitted, provided the conditions of appeal are performed, as prescribed by the regulations.

December 13, 1810.

No. 73
1793
Reg III. Sec 8
Benares 1795
Reg. VII Sec 7
C. C. P. 1803
Reg. II. Sec 5

On the 4th January, 1811, the Sudder Dewanny Adawlut, in reply to a reference made by the Judge of Rajeshahye, whether a suit for recovery of an excess of rent, collected by a *surburakar*, from a *mokurruree mohaul* situated in Nuddea, should be instituted and tried in Rajeshahye, the defendant's place of residence, or in *zillah* Nuddea; gave it as their opinion, that it should be brought forward and tried in the latter district, on the ground that the lands being situated in Nuddea, any local inquiry that might appear necessary could be made with greater facility and propriety, under the orders of the Court presiding over the jurisdiction in which the lands were included.

January 4, 1811.

No. 74.
1810
Reg. XIII
Sec. 4, Clause 4th.

In answer to a query submitted by the third judge of the Patna provincial court, the Court of Sudder Dewanny Adawlut determined, on the 10th January, 1811, that under clause fourth, Section 4, Regulation XIII. 1810, a single judge of a provincial court is competent to exercise the power vested in the provincial court collectively, by Section 18, Regulation V. 1793, as far as respects the admission of further evidence to be taken for the decision of the provincial court; but that it is not competent to a single judge to refer a suit back to a *zillah* or city court for further investigation and decision, without the concurrence of one or more of the other judges, in conformity with clause third, Section 2, of the above regulation.

January 10, 1811.

No. 75.
1793.
Reg. III. Sec 2.
Benares, 1795
Reg. VIII. Sec. 2
C. C. P. 1803
Reg. II. Sec 2

A question having been agitated by the acting judge of the city of Moorshedabad, through the court of appeal, respecting the application of this rule to the *gomashtahs* of banking houses, the Court, in a letter dated the 31st of January, 1811, gave it as their opinion, that a managing *gomashtah*, under the general and known powers vested in him, might institute and defend suits, and carry on all concerns connected with the *kotee* of which he was the ostensible representative, without producing any authority from his principals for so doing.

January 31, 1811.

No. 76.
1810
Reg. IX. Sec. 39.

In reply to a question from the acting magistrate, *zillah* Agra, respecting the definition of the word "exact" occurring in this section, the Nizamut Adawlut gave their opinion on the 31st January, 1811, that the term must be construed to apply to the actual collection, and not the mere demand, of the duties adverted to; but that the Court considered the offence punishable as a misdemeanor under the regulations and Mahomedan law.

January 31, 1811.

No. 77.
1803
Reg III. Sec 10. Bengal, 1793
Reg IV Sec 8. Benares, 1795
Reg. VIII. Sec 2.

In reply to a question from the acting judge of *zillah* Agra, respecting the subsistence money of defaulters confined in jails of *dewanny* courts at the instance of collectors of land revenue under Section 11, Regulation XXVII. 1803, the Sudder Dewanny Adawlut determined on the 31st January, 1811, that the judge should exercise the discretion vested in him by Section 10, Regulation III. 1803, (with regard to defaulters confined at the suit of plaintiffs,) in settling the amount of subsistence money to be allowed to defaulters confined at the suit of collectors.

January 31, 1811.

No. 78.
1803.
Reg III Sec. 7; and 1803. Reg VIII Sec 25, Clause 1st. Bengal, 1793
Reg IV. Sec. 6, and 1803. Reg. L. Secs. 1 and 2, Clause 1st. Benares, 1795.
Reg VIII. Sec. 2.

In reply to a reference from the acting magistrate of *zillah* Agra, regarding the mode of process which should be adopted by a magistrate to procure the attendance of witnesses required by him, whose names might not be mentioned on oath by any prosecutor or other person, as essential to the elucidation of the merits of the case; the Nizamut Adawlut observed, on the 14th of February, 1811, that they considered the *zillah* and city magistrates fully competent to issue the process directed by Section 7, Regulation III. 1803, against any witness whose evidence they might require, although such witness was not named on oath by any prosecutor or other person as acquainted with the circumstances of the case.

February 14, 1811.

No. 79.
1803.
Reg. VI Sec. 31; and 1807.
Reg. IX. Sec. 19; and 1803.
Reg VIII. Sec. 25, Clause 2d.

The acting magistrate of *zillah* Agra having submitted a question to the Nizamut Adawlut respecting the extent of imprisonment which a magistrate is empowered to adjudge, in lieu of a fine imposed on a witness for non-attendance; the Court, in reply, informed the acting magistrate, on the 28th February, 1811, that the period of imprisonment fixed in lieu of fines imposed by the magistrate, under Section 31, Regulation VI. 1803, (viz. not exceeding one month,) being extended by Section 19, Regulation IX. 1807, to any period not exceeding six months, they considered, under that section, and the second clause of Section 25, Regulation VIII. 1803, witnesses summoned by the magistrate, and after receiving the summons not attending as required, or although attending refusing to give evidence, liable to a fine proportionate to their situation in life, not exceeding the sum of 500 Rupees, (subject to the provision stated in the second clause of Section 25, Regulation VIII. 1803, with respect to attending witnesses;) and in the event of such fine not being paid, liable to be confined for such period as the magistrate may direct, not exceeding the term of six months.*

February 28, 1811.

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* Superseded by the Court's construction of 31st of August,

No. 80.
1806.
Reg. XVII.
Section 8

In reply to a reference from the judge of *zillah* Jessore, the Sudder Dewanny Adawlut determined, on the 14th of March, 1811, that the provisions of Section 8, Regulation XVII. 1806, do not entitle a mortgagee to be put in possession, by judicial process, of the property mortgaged to him, although stated to be unredeemed at the expiration of the period notified, if the mortgager contest the right of the mortgagee to obtain possession; and that a judge is not authorized in such case to put the mortgagee in possession on a summary investigation, or otherwise than by a regular suit.

The judge was farther informed, that if the mortgager, on being called upon to show cause why the mortgagee should not obtain possession, denied the right of the mortgagee to possess the lands; the question of right could only be determined as directed by Section 5, Regulation I. 1798.

March 14, 1811.

No. 81.
1793.
Reg. IX.
Sec 40,
1803.
Reg VII.
Sec. 17.

In reply to a reference made by Mr. J. Rees, whether he was competent to pass sentence on a case postponed by him for further evidence, while officiating as judge of circuit for the division of Moorshedabad, (Mr. Rees being no longer employed in that capacity,) the Court determined, on the 15th March, 1811, that Mr. Rees, under the circumstances stated, was incompetent, and that the sentence in the case in question should be passed by the judge of circuit for the division, who might hold the ensuing session.

March 15, 1811.

No. 82.
1806
Reg. X.
1810.
Reg. VIII.

In reply to a reference of the third judge of the Bareilly court of circuit, with regard to the mode of issuing the warrants of the court to the superintendent of police, the court of circuit was informed on the 28th March, 1811, that the superintendents of police, in their capacity of magistrate, were equally subject to the control of the courts of circuit with all magistrates; and that the warrants and orders of the courts of circuit may be issued to them in like manner as they are usually issued to the *zillah* and city magistrates.

March 28, 1811.

No. 83.
1810
Reg XIII.
Section 2, Clause 3d.

A question having been submitted to the Sudder Dewanny Adawlut, regarding the construction of this clause, the Court, on the 28th March, 1811, gave their opinion in a circular order, that when a single judge of the provincial court, trying a cause in appeal from a *zillah* or city court, shall think the decision of the *zillah* or city court ought to be reversed or altered, and shall record his sentiments to that effect, another judge of the provincial court, sitting afterwards upon the same appeal, and concurring in the recorded opinion of the judge who first sat, may pass a final order or decree, under the spirit of the clause above-mentioned, without waiting the actual presence of two judges at the same sitting.*

March 28, 1811.

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* This construction rendered unnecessary by the provisions of Regulation XXV. 1814, relating to the powers of single judges.

No. 84.
1810
Reg. IX. Sec. 31.

The assistant magistrate of *zillah* Allyghur having instructed a police *darogah* to stop some loads of charcoal proceeding through his jurisdiction, on the ground that a *zemindar* was collecting the same for the manufacture of gunpowder, and that the regulation prohibited the transit of military stores excepting under pass from Government, a reference was made by the Bareilly court of circuit on the subject; and the Nizamut Adawlut determined, on the 3d April, 1811, that charcoal not being specified in Section 31, Regulation IX. 1810, or in its unprepared state generally considered a military store, it could not be deemed liable to seizure and confiscation; and further the Court observed, that they were not aware that it was confiscable under any regulation then in force.

April 3, 1811.

No. 85.
1807
Reg. IX. Sec 19.

The acting magistrate of Agra was informed on the 3d of April, 1811, in reply to a question, "how he was to proceed against two convicts employed on the roads who had committed an assault on a passenger," that if he considered the punishment he was authorized to inflict on the prisoners under Section 19, Regulation IX. 1807, inadequate to their offence, he should commit them to take their trial before the court of circuit.*

April 3, 1811.

No. 86.
1806
Reg. II Sec. 11.

The judge of the 24-Pergunnahs was informed, on the 11th April, 1811, in reply to certain queries put by him, regarding the construction of Section 11, Regulation II. 1806, that the Court were of opinion, that Section 11, Regulation II. 1806, was applicable only to persons in confinement, under decisions passed by the civil courts; and consequently that the provisions of the above section, though applicable to revenue defaulters, as well as other persons, when confined under a judgment of court, had no reference to the case of a defaulter in confinement, for arrears of revenue, at the instance of a collector against whom no judgment had been passed.†

The Court further gave it as their opinion, that as no fixed period was specified in the regulations the time to be allowed the creditor to point out the property of a debtor, confined under execution of a judgment, should be left to the discretion of the court by whom the judgment might be enforced.

April 11, 1811.

No. 87.
1793.
Reg XL.
Secs 13 and 14, and Clause 11, Sec. 9.
Benares, 1795.
Reg XXXI
C. C. P 1803 &
Reg XVI.
Secs 11 and 12.

The judge of *zillah* Dinagepore was informed, on the 12th April, 1811, in reply to a reference made by him respecting the powers of registers and native commissioners, in cases of perjury, that as the provisions of Sections 13 and 14, Regulation XL. 1793, restrict the native commissioners from confining parties, *vakeels*, or witnesses, and from

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* The magistrates not being authorized by the regulations to inflict stripes, excepting for theft, the acting magistrate appeared to doubt whether a short imprisonment, in addition to the sentences already passed on the prisoners, was a suitable punishment. But see the provisions of Section 5, Regulation XIV. 1816.

† The same construction was given on the 12th of December, 1811, No. 95, page 23, in answer to a reference from acting judge of zillah Behar.

enforcing their own decisions; they have no power of taking persons into custody, and consequently cannot themselves commit witnesses for perjury.—The Court also expressed their opinion, that whenever a native commissioner might see sufficient ground for causing a witness to be brought to trial for perjury, he should, under the general rule prescribed by clause eleventh, Section 9, Regulation XL. 1793, record the circumstance and transmit his proceeding to the judge, who, under the general discretion vested in him, with respect to cases referred to the native commissioners, should commit the party to take his trial in pursuance of Section 14, Regulation IV. 1793, or otherwise as he might deem proper.

Bengal, 1704. Reg VIII Secs. 3 and 8 Benares, 1795. Reg LIV Sec. 2. C C P. 1809. Reg XLIX. Sec 6, Cl. 3d.

The Court further remarked, that registers, under Sections 3 and 8, Regulation VIII. 1794, and other rules prescribed for their guidance, being vested with the same powers as the judges in all suits referred to them for decision, were of course competent to commit to trial for perjury, persons whom they might consider guilty of the wilful delivery of false evidence before them.*

April 12, 1811.

No. 88.

1809 Reg. VIII. Sec. 3.

A question having arisen, in consequence of the third judge of the court of circuit for the division of Calcutta, having, while singly holding a sitting of that court, authorized the dismission of a police *darogah*, on the report of the acting magistrate of *zillah* Midnapore, the court of Nizamut Adawlut, viz. the third and fourth judges, against the opinion of the second judge, determined on the 4th July, 1811, that a "single judge holding a sitting of the court of circuit, was not competent, under the existing regulations, to authorize the removal of a police *darogah*." The order passed by the third judge of the Calcutta court, was accordingly revoked, and instructions issued to the court, to reconsider the case, at a sitting consisting of two or more judges.†

July 4, 1811.

No. 89.

1811 Reg I. Sec 9 Clauses 1 and 2.

The magistrate of Jessore was informed, on the 11th July, 1811, in reply to a reference made by him, that the Court were of opinion, that a person who had been concerned in house-breaking or *dacoity*, giving information to a magistrate, through a police *darogah*, which might lead to the apprehension and conviction of the principal receivers of the stolen property, was entitled to the benefit of the provisions of clauses one and two, Section 9, Regulation I. of 1811.

July 11, 1811.

No. 90.

On the 12th September, 1811, the two following general points of regulation were submitted to the consideration of the Sudder Dewanny Adawlut, in a reference from the Benares court of appeal.

1808. Reg XIII Sec. 11, Clause 2d.

1st. Whether under clause second, Section 11, Regulation XIII. 1808, the court of appeal were competent to restore an appellant to their court to possession, after the possession had been given to the respondent by the *zillah* judge.

1810. Reg. XIII Sec. 2, Clause 3d.

2dly. Whether a judge of the provincial court, sitting singly, is competent, under clause third, Section 2, Regulation XIII. 1810, to order possession to be restored to appellant, in the circumstances above supposed.

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* See No 285, page 107.

† But see the provisions of Regulations XXV. 1814, with respect to the powers of single judges.

The reply of the Court was to the following effect:

2. On the first point, the Court are of opinion, that cases may arise, in which the provincial court of appeal would be warranted in restoring the appellant to possession, after the respondent had been put in possession by the *zillah* or city court, in execution of its decree: as for instance, where an appellant had regularly preferred his appeal, and tendered proper security to the *zillah* or city court, and moved it to suspend execution of its decree until the orders of the provincial court could be received. Should the *zillah* or city court, in such circumstances, proceed to execute its decree, and it should appear to the provincial court, that special ground existed for staying execution; and that court should further judge, that no serious inconvenience would be likely to result from again changing the possession, the Court of Sudder Dewanny Adawlut are of opinion, that the provincial court would be warranted, under such circumstances, in restoring the appellant to possession.

3. The Court likewise observe, that other cases might occur, in which the provincial court would be competent to exercise the power in question; but all of which cannot of course be foreseen and defined.

4. The determination of the 2d point must depend, the Court remark, on the question, how far the application to the provincial court is to be considered as an appeal from the order of the court below, and the order of the single judge may involve a difference of opinion with the court below.

5. In the case which the Court have supposed in the 2d paragraph of these resolutions, the Court are of opinion, that the single judge would be competent to exercise the power of the Court since his ordering the appellant to be restored, would obviously involve no difference of opinion with the lower court; and the application to the provincial court in such a case would be, merely for that court to exercise its own powers; and could not be considered as an appeal from the orders of the lower court. But supposing a case in which the *zillah* or city judge should have refused to stay his decree, after an appeal had been regularly preferred, on the ground of the security tendered not being valid, as the single judge could not in such a case order the appellant to be restored without admitting the validity of the security, his ordering that measure would involve a difference of opinion with the *zillah* or city judge, and would of consequence exceed his competence.

September 12, 1811.

No. 91.
1809
Reg VIII. Sec. 5.

On the 19th September, 1811, the question, "whether a single judge of the court of circuit engaged in the *half yearly* sessions of jail delivery, was competent to authorize the dismission of a police *darogah*, without the concurrence of one of his colleagues," was submitted in a reference from the Patna court; and the Nizamut Adawlut being of opinion, that the principle of the former determination of July 4, 1811, No. 89, was applicable to the point now before them, a similar order was passed.*

September 19, 1811.

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* On this point, see clause eight, Sec. 7, Reg. XVII 1816.

The Court are of opinion, that the spirit of the provision in Regulation VII. 1793, does not preclude a party in a suit, from authorizing a *mokhtar* duly constituted by a written *mokhtarnama*, to select one or more of the established pleaders, and execute a *vakalutnama* to him or them, for conducting the prosecution or defence of the suit.

No. 92
1793.
Reg. VII. 1795
Reg. XIII
1803. Reg X

Such practice enabling parties to ascertain through their *mokhtars*, what *vakeels* are best qualified to undertake their causes, appears unobjectionable, and has been sanctioned by the established usage of the Sudder Dewanny Adawlut.

To Judge Zillah Julalpore, 19th September, 1811, No. 16, Sudder Dewanny Adawlut.
September 19, 1811.

The acting judge of *zillah* Goruckpore was informed, on the 26th September, 1811, in reply to a query put by the late judge,—

No. 93
1803.
Reg IV Sec 14, Clause 1st
Bengal, 1793
Reg. V. Sec 4.
1803
Reg XXVII
Sec. 53, Clause 3d.

That the estates of persons who have obtained decrees, establishing their proprietary right in *malguzaree* lands, but who are excluded from possession of these estates by the operation of clause third, Section 53, Regulation XXVII. 1803, are not liable to be disposed of at public sale, in liquidation of the arrears of public revenue; the general principle of clause first, Section 14, Regulation IV. 1803, not being applicable to persons standing in the predicament described.

September 26, 1811.

In answer to a question from the acting magistrate of *zillah* Nuddea, requesting to be informed whether persons convicted of preferring malicious and unfounded charges, may be sentenced to the full extent of punishment prescribed by Section 13, Regulation IX. 1807, or whether the punishment for this offence is by Section 5, Regulation VII. 1811, confined to six months' imprisonment, in addition to the 15 days' imprisonment or fine of fifty Rupees, directed by Sections 8 and 10, of Regulation IX. 1793; the Court declared their opinion, that a magistrate is empowered to punish malicious and unfounded charges, with imprisonment not exceeding six months, and a fine not exceeding 200 Rupees, commutable, if not paid, to a further period of imprisonment, not exceeding six months, adding, that they understood Section 5, Regulation VII. 1811, to provide for an extension of the period of imprisonment, limited by Section 10, Regulation IX. 1793, leaving the provision for a fine, as they stood in the regulations before in force.*

No. 94
1811.
Reg. VII Sec 5
1807
Reg IX. Sec 19
1793
Reg IX
Secs 8 and 10

October 24, 1811.

A reference having been made by the acting judge of *zillah* Behar, the Sudder Dewanny Adawlut, on the 12th December, 1811, determined that this section was applicable only to persons in confinement under decisions passed by the civil courts; and that the provisions of this section, though applicable to revenue defaulters as well as other persons when confined under a judgment of court, have no reference to the case of a defaulter in confinement, at the instance of a collector, for the arrears of revenue, against whom

No. 95.
1800
Reg. II. Sec 11

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* Superseded by the Court's construction of 31st August, 1827, No 459, page 194.

no judgment has been passed. This construction obviously comprehends the cases of insolvent *abkars*, confined on the process of a collector under Section 15, Regulation VI. 1800, to whom, therefore, Section 11, Regulation II. of 1806, cannot be applicable.

December 12, 1811.

No. 96.

1799
Reg VII. Sec. 15.

From the Acting Assistant Judge of Zillah Nuddea.

I have to request the favour of your obtaining for me the opinion of the Court of Sudder Dewanny Adawlut, whether summary suits instituted under the VIIth Regulation of 1799, are liable to be tried *ex-parte*, on the defaulter evading the process of the Court, or if his attendance is indispensably requisite, and in the event of his not being forthcoming, the claim is to be rejected, and the claimant referred to a regular suit, for the recovery of the arrear.

2. In the XXXVth Regulation of 1795, an *ex-parte* investigation was expressly provided for, by the second clause of the 13th Section; but the rules therein laid down, have been superseded by the VIIth Regulation of 1799, and no provision is made for a decision on the proofs adduced solely by the claimant.

3. It has been the practice, for some years past in this Court, to *ishtihar* the defaulter, on a return made by the *nazir*, that he has been unable to seize his person, and in the event of his not appearing, to contest the justness of the demand, to proceed to an investigation on the allegations and documents of the plaintiff only.

4. A different mode of proceeding is, I believe, adopted in some districts, but that which I have noticed as prevailing here, although not in strict conformity with the letter of the regulation, which appears to be grounded on the certainty of the defaulter being secured, is, I apprehend, agreeable to the spirit of it, as it could never have been the intention of the legislature, that the defaulter should derive any advantage, by avoiding the process of the court, or the claim of the plaintiff be rejected in consequence of the inability of the court to enforce its own orders, and especially as the very act of absconding affords strong presumption of the justness of the demand.

To the Judge of Zillah Nuddea.

I am directed by the Court of Sudder Dewanny Adawlut, to acknowledge the receipt of a letter from Mr. Clark, assistant judge, under date the 26th ultimo, requesting the opinion of the Court, whether summary suits, instituted under Regulation VII. 1799, are liable to be tried *ex-parte*, on the defendant's evasion of process for his arrest, and non-attendance on proclamation.

2. The Court observe, that the professed object of the summary process authorized by Section 15, Regulation VII. 1799, (as declared in the first clause of that section,) is to enable landholders, and farmers, to whom arrears of rent may be due, which cannot be realized by distraining the personal property of their under-tenants, to cause the immediate arrest of the defaulter and his surety, and their subsequent detention in close custody, until the arrear be paid, with interest and costs; the proprietor or farmer to whom the arrear may be owing, being at the same time at liberty to attach the *jote* or other tenure of the defaulter, and to manage the same in such manner as he may think proper, until the

rent due be liquidated, with interest, with further provision (in the seventh clause of the above mentioned section) for ousting the defaulting tenant, or bringing his tenure to sale, at the end of the current year, if the arrear be not recovered by the attachment, or discharged by the defaulter, or his surety.

3. The Court are therefore of opinion, that the summary inquiry provided for by Section 15, Regulation, VII. 1799, was not intended to be made *ex-parte*, but on the arrest of the defaulter, or his surety; and they are not aware, in what cases and for what purposes it would be advantageous to the landholders, or farmers, claiming an arrear of rent, that the inquiry directed in the above section should be made, without the arrest of the defaulter, or his surety; unless it be to warrant an application to the *dewanny adawlut* for the sale of a transferable tenure, at the end of a year, in pursuance of the seventh clause before referred to.

4. The Court, however, previously to forming a final opinion on the question referred by the assistant judge, wish to be informed in what cases it has been usual (as stated in the third paragraph of Mr. Clark's letter) to proceed to an investigation, on the allegation and documents of the plaintiff only; and to what effect judgments have been given on such investigations, as well as in what manner they have been executed.*

January 16, 1812.

No. 97. 1796 Reg X. Sec 8.

Any general rules or forms, which courts of circuit may judge it necessary to be observed by the *zillah* and city magistrates, should be proposed in the first instance to the Nizamut Adawlut under the general powers vested in that Court by the section quoted.†

February 27, 1812.

No. 98. 1808 Regulation X. Sec 6

The superintendent of police for the lower provinces, in answer to three questions put by him, regarding the construction of the existing regulations, was informed on the 12th March, 1812,—

1*st.* That the Court considered him fully competent to pass sentence against any person amenable to his jurisdiction, who should be convicted before him, of resistance to the execution of a warrant or other legal process, issued by him under Section 6 of the regulation quoted.

2*d.* With respect to his being authorized to make application to the local magistrate to carry the above sentence into execution, the Court observed that they did not consider such authority to be vested in the superintendent by the letter or spirit of the regulation; and further declared their opinion, that the exercise of it would be incompatible with the relative situations held by him and the local authorities.

3*d.* That the superintendent was competent to pass sentence of punishment against any persons apprehended by, and proved guilty before him, of any offence punishable

* See however the provisions contained in Section 18, Regulation VIII. 1819.

† On this point see clause one, Sec. 3, Regulation VII. 1829.

under the existing regulations by a *zillah* or city magistrate; but that he was not authorized to apply to the magistrate to carry the said sentencee into effect.*

March 12, 1812.

No. 99.
1811
Regulation X.

The acting magistrate of *zillah* Agra was informed, on the 23d April 1812, that the Court, adverting to the title and preamble of the regulation quoted, and to the bond, required by Section 5, understood the provisions in it to be applicable only "to the importation of slaves for the purpose of being sold, given away, or otherwise disposed of." The Court, at the same time, observed, that no part of the regulation in question was applicable to the sale of slaves not imported into the British territories.

April 23, 1812.

No. 100.
1790
Reg. VII Sec. 18, and 1803 Reg XLIX. Sec 24, Clause 1.

On a reference from the Patna provincial court, relative to an appeal admitted by the senior judge of the court, against a summary judgment for arrears of rent passed by the judge of Tirhoot, the Court observed, as to one of the points submitted for their decision, viz.—

"Whether the senior judge was competent to admit the appeal in the case stated under the restriction contained in the 18th Section of Regulation VII. 1799;" that as the provincial courts are empowered, by the first clause of Section 24, Regulation XLIX. 1803, to admit a special appeal, in all cases, wherein a regular appeal may not lie to them, if the decree appealed from appear erroneous or unjust, the senior judge was competent to admit a special appeal in the case, on the ground stated in his proceeding of the 7th December, 1811, and more fully explained in his subsequent proceeding, of the 30th of that month.†

See also a letter to Benares provincial court, to the same effect, recorded 29th August, 1811.

N. B. The other point included in the above reference was, "whether the *zillah* judge was authorized, under the circular order of the 18th April 1811, to state his objection to the provincial court in an English letter;" and the Court were of opinion that he was; the order alluded to expressly noticing, "Discussions regarding the relative powers of European officers."

April 23, 1812.

To the Judge and Magistrate of Zillah Rajshahye.

No. 101.
Circular Order of the Nizamut Adawlut, dated June 13, 1811

I am directed by the Court of Sudder Dewanny and Nizamut Adawlut, to acknowledge the receipt of two letters from you, dated the 15th and 16th instant: in the former reporting that the *vakeels* generally employed at your station had refused to attest confessions made before you; and in the latter, that on communication of the orders conveyed in my letter to you of the 13th instant, they had, with the single exception of Ram Lochun, a *vakeel* attached to the *sudder aumeen's* court, declared their willinguess to comply with your requisition, to witness any confession made in their presence in future.

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* The office of superintendent of police has been abolished by Regulation I of 1829.

† But see the latest rules relative to special appeals contained in Regulation II. 1825

2. The Court will have no hesitation in ordering the dismission of Ram Lochun from his office of *vakeel* in the *sudder aumeen's* court, if no sufficient reason is assigned by him for refusing compliance with your requisition. But they deem it proper, previously to his dismission, to desire that you will furnish them with a copy of any proceeding which may have been held by you, relative to the disobedience of Ram Lohcun in this instance; and that, if not already called upon, he be required to state his reasons for not complying with the orders communicated to him.

3. With reference to the observations contained in the 4th paragraph of your letter of the 15th instant, relative to the difficulty generally experienced, and particularly by the *darogahs* of police, in procuring the attendance of creditable persons, to witness confessions, in pursuance of the circular orders of the Nizamut Adawlut, under date the 13th June, 1811, the Court direct me to communicate to you their opinion, that a *darogah* would be fully justified in summoning respectable persons, for the purpose stated, when it might be requisite; and that in the event of such persons refusing to attend, or to attest a confession taken in their presence, the *darogah* should submit a report of the case to the magistrate; who, after calling upon the parties for any explanation they might have to offer, would be competent to pass such order on the case (within the general limitation of his authority) as might appear proper.

4. The Court observe, however, that your police *darogahs* should be enjoined to be particularly cautious in the exercise of the power above mentioned, and to avoid, as much as possible, summoning any persons, whose absence from their houses, with reference to their occupations and other circumstances, might be attended with serious inconvenience.

April 23, 1812.

No. 102.
1793 Regulation IX. Section 40

By Section 40, Regulation IX. 1793, the judges of circuit are required to remain at each station until all persons committed, or held to bail by the magistrate, shall have been tried, and (in matters on which sentence is directed to be passed by the judges) *sentence shall have been passed upon them*, or (in cases in which the judges are not authorized to pass sentence) the trial shall have been referred to the Nizamut Adawlut.

A question arises under the above Section, whether a judge of circuit, referring a trial to the Nizamut Adawlut without passing sentence, although within his competence under the general regulations, and upon insufficient grounds, can supply the defect at a different station from that at which the trial may have been held. The Court of Nizamut Adawlut ruled that he can.

May 19, 1812.

No. 103.
1803 Reg XXVIII. Section 30 Bengal, 1790. Reg. VII. Section 13. Benares, 1800 Reg. V Sec. 13.

In reply to letters from the judge of *zillah* Allahabad, dated the 2d and 5th May, 1812, submitting the following questions; 1st. "Whether a native commissioner in his capacity of *moonsiff*, was competent to receive and decide upon claims (within the prescribed limitation and instituted before him in the first instance) for the recovery of the amount of an unjust attachment and sale of personal property;" and 2dly, "whether in appeals from the decisions of the native commissioners, referred under clause second, Section 9, Regulation XIII. 1810, to the *sudder aumeen*, or to one of his law officers, empow-

1803 Reg XVI. Sec 26, Clause eleventh.

ered to act as head referee, the pleadings were required to be written on stampt paper, and the usual exhibit fees to be levied on the exhibits received upon such appeal, or not;" he was informed, on the 21st May, 1812, that the native commissioners were authorized, by Section 30, Regulation XXVIII. 1803, to take cognizance of the description of suits noticed by him;* and with respect to the second question, that the Court were of opinion, that under the general terms of the eleventh clause of Section 26, Regulation XVI. 1803, the use of stampt paper was not required; nor the exhibit fee demandable, in appeals referred to the head native commissioners, or the law officers acting as head referees."†

May 21, 1812.

No. 104.

1803. Reg LIII Sec. 2, Clause seventh.

The Court of Nizamut Adawlut decided that *tusheer* was not to be awarded by courts of circuit, under clause seventh, Section 2, Regulation LIII. 1803.—See case of Bheekum Bhutt, proceedings Nizamut Adawlut, 24th June, 1812.‡

June 24, 1812.

No. 105.

1806. Reg XVII. Sec. 8.

In answer to a letter from the judge of *zillah* Etawah, it was ruled, that an action on the part of the mortgagee for possession, at the expiration of the period of deed of mortgage, cannot lie in the first instance against the mortgagee disputing his claim under the deed, without application being made to foreclose, as directed by Section 8 of the regulation quoted.

June 25, 1812.

No. 106.

1803 Reg. III. Sec. 9. 1806 Reg. XIII Sec. 12. Clause 2.

The judge of zillah Allahabad requested the opinion of the Sudder Dewanny Adawlut, whether under any circumstances, besides that of the defect of the appellant to give security in cases of money or other moveable property for staying the decrees of the judge and register, he was competent to exercise any discretion in respect to the execution of them.

In reply the opinion of the Court was communicated to him, that under the regulations in force, no discretionary power is vested in the courts, with regard to the enforcement or staying execution of decrees for money, or other moveable property, in cases of appeal; and that in such cases the decree cannot be carried into execution during the appeal, provided the appellant give good and sufficient security under the provisions of clause second, Section 12, Regulation XIII. 1808, for performing the decision which may be passed upon the appeal.

July 16, 1812.

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* The same construction was given on the 19th of April, 1828, No 480, page 204

† This has been superseded by the provisions contained in Regulation X. of 1829. See Schedule B, Secs. 8 and 9

‡ Reported in the 1st vol. of the N. A Reports, page 234

In answer to a reference made by the judge of zillah Jungle Mehauls, the Sudder Dewanny Adawlut, on the 23d July, 1812, communicated their opinion, that the suits instituted under Regulation V. of 1812, might be referred for the report directed in Section 21 to the register at that station in his capacity of assistant to the collector of Burdwan, he being the only revenue officer on the spot.

No. 108.
1812.
Reg. V. Sec. 21

July 23, 1812.

A petition for a special appeal, on which the institution fee has been received in conformity to the second clause of Section 24, Regulation XLIX. 1803, being ultimately rejected by a court of appeal, the petitioner has not a right to demand restitution of the institution fee paid by him in the first instance.

No. 109.

If the court, in any case, deem it just and proper that the institution fee be returned, they must submit the case to the Sudder Dewanny Adawlut, who are authorized by the latter part of Section 5, Regulation III. 1802, to direct a return of the institution fee or otherwise.*

1802
Reg III. Sec 5

August 20, 1812.

On the 3d September, 1812, the Sudder Dewanny Adawlut gave the following opinions, in answer to certain questions proposed in a letter from the judge of zillah Allahabad.

No. 110.
1803
Reg X. Sec 9.

1st. That as the security required by the regulations to be furnished to stay the execution of decrees appealed from, is exclusive of costs; payment of costs should invariably be enforced, though execution may be stayed in other respects. It was at the same time pointed out to the judge, that an express rule to the above effect, with regard to the fees of pleaders, which form a principal part of the costs of suits, is contained in Section 9, Regulation X. 1803.

2d. That plaintiffs, in the summary suits authorized by the regulations, have an option of preferring their claims, either in person or by *vakeel*, and are not required by any regulation to prefer their claims, in such cases, upon oath or solemn declaration, as was stated by the judge to have been the practice in his court.

3d. That a witness, who has been fined in consequence of his refusal to take an oath, cannot, after discharging the fine, be admitted to give his evidence on a solemn declaration, unless the judge, by whom the fine was imposed, should see ground to change his opinion that the witness was not, in the first instance, a proper object of exemption from taking an oath; in which case, the fine might be remitted, and the witness admitted to give his evidence on a *hulufnameh*.

The Court, at the same time, remarked, that the imposition of a fine upon witnesses refusing to take an oath is required by the regulations to be grounded on the deliberate judgment of the Court by whom it is awarded, that the witness is not entitled to be exempted from swearing; and that the subsequent payment of the fine cannot alone affect that decision.

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* See the provisions contained in the second clause of Section 2, Regulation II. 1825.

1803. Reg L. Sec. 2.

Further, that by the second clause of Section 2, Regulation L. 1803, no limitation is fixed to the confinement which a court may award in commutation of fines adjudged in cases of this nature; and that the discretion of the courts, therefore, in this respect, must be regulated by the circumstances of each case: that according to the clause above quoted, a witness, who has been fined for refusing to swear, is to be discharged on paying the fine, if the suit in which his evidence was required have been decided; or still kept in confinement, under the latter part of the same clause, and the original provision of Section 7, Regulation III. 1803, whether he has paid the fine or not, if the cause in which his evidence is required be still pending, until he shall consent to give his deposition on oath as required

1800. Reg II. Sec. 11.

4th. That a person who has been admitted to sue as a pauper, and whose suit has been dismissed with costs, is liable to confinement at the instance of the defendant, and on the deposit of the prescribed subsistence money, if he fail to pay the amount adjudged against him by a decree, in like manner with any other suitors, and of course, in common with all insolvent debtors, equally entitled to the benefit of the rules introduced by Section 11, Regulation II. 1806.

September 3, 1812.

No. 111.

1807 Reg IX. Sec. 9, Clause second.

On a reference from the senior judge of Moorshedabad court of circuit, requesting the opinion of the Nizamut Adawlut, "whether the courts of circuit were restricted from accepting bail themselves, under the second clause of Section 9, Regulation IX. 1807, which empowers them to instruct the magistrate to admit to bail persons accused of criminal offences not bailable under the general regulations, whilst the charge against them may be under trial;" the Court observed, that cases might arise, though rarely, which would warrant the court of circuit in accepting bail itself, in the first instance; but that such cases cannot be provided for by any general instructions, and when they occur, must depend on their own peculiar circumstances.

October 22, 1812.

No. 112.

1812 Reg V. Sec. 21.

The judge of *zillah* Agra was informed, on the 23d October, 1812, that the Court were of opinion, that suits instituted, either to procure attachments of distraint issued by proprietors of rent-free lands to be withdrawn, or to recover damages for undue distraint exercised by them, are referrible to the collectors under this section, as well as similar suits respecting land paying revenue to Government.

October 23, 1812.

No. 113.

1799 Reg. VII. Sec 15.

To the Register to the Court of Sudder Dewanny Adawlut.

SIR,

I request you will submit, for the consideration and orders of the superior Court, the accompanying copy of my proceedings of this date, in a miscellaneous case, Rajah Ramnath Roy *v.* Dostmahomed Khan, which originated in a petition preferred by the former,

alleging the latter to be in balance for the year 1218, B. S., and stating that he was about to resume possession of the farm of Turf Kulum, (which had been granted to the father of Dostmahomed Khan on a lease of 10 years, in the year 1212, B. S.) under the provisions of Regulation VII. 1799, and, therefore, requesting that the judge would issue such orders as would prevent any opposition being made by the farmer to the exercise of the right which was vested in him by the said regulation. An order was accordingly passed by Mr. Cornish, directing the farmer to give up the farm, and to abstain from opposition to the claims of the *zemindar*. Shortly after this, Dostmahomed Khan presented a petition stating that the Rajah, in resuming possession of the farm, was dispossessing him of Gungarampore and other villages attached to his own *talook* of Kanso, which he had purchased at a sale at the Collector's office in 1207, many years before the grant of the farm. The Judge, after examining the *pottah* and other vouchers produced by the petitioner, ordered that he should remain in possession of Gungarampore and the other villages; that the Rajah should have possession of the farm of Turf Kulum; and evidence and more documents were required from both parties. In the mean time, both parties assembled large bodies of men, and retained possession of what they considered their respective rights, and very serious affrays would have taken place, but for the active measures adopted by Mr. Cornish to prevent them. The witnesses for both parties having attended, the case came before me, when it was clearly proved by the receipts produced by Dostmahomed Khan, that the statement made by the Rajah, that he was in balance, was entirely false; and that he had paid even more than the revenue which was due from him. This being the case, and as it is now proved in court that the demand of balance was false, and that the farmer has not only paid his revenue for 1218, but a considerable part for the present year, I am of opinion that the provisions of Regulation VII. 1799, cannot, upon principles of justice and equity, be allowed to take their course. I trust, therefore, that the superior Court will be pleased to allow of my revising the order of my predecessor, (who was not, when he passed the order, aware of the truth or falsity of the Rajah's statement,) and that Dostmahomed may retain possession of his farm, on condition of fulfilling his engagements, until the expiration of his lease in 1222, B. S., within which time the Rajah may bring his claim regularly before the Court, on the ground of Dostmahomed Khan's possessing himself of the villages of Gungarampore, &c. as part of his *talook* of Kanso. Should the Court sanction this order, it will at once prevent any further disputes, and will be the fairest and most expedient way of settling those which at present exist between the parties.

I cannot conclude this subject without humbly soliciting the superior Court to take into their consideration the expediency of modifying the rule of the seventh clause of Section 15, Regulation VII. 1799, which particularly relates to proprietors of land being allowed to oust their defaulting tenants (farmers) without any previous application to the courts of justice. The right was never known nor acknowledged in this district till within these few months, and it appears never without abuse. Petty or unproductive farms hold out no temptation to the lessor to resume them. It is in cases similar to that which I have detailed in this address, in which the farm has been gradually improved during a tenure of many years, and where the revenue is well paid up, that the proprietor finds his account in ousting his tenant and putting in a new farmer, who will readily engage to pay an increased rent, when the

1799
Reg. VII
Sec. 15, Cl. 7

resources have been augmented by the care and assiduity of the former tenant. Taken in this point of view, it cannot, I think, fail to strike the Court that this power must tend to encourage a breach of good faith between the proprietor and his farmer, and to weaken that security in landed property, which it is the first object of the regulations to strengthen and promote: and although it is provided in what manner a tenant, unjustly ousted, may recover his right, if infringed, yet the process of a regular suit is too tedious, and the benefit too remote to allow of many pursuing it. I trust I shall not be thought presumptuous in offering a few remarks on what appears to me the most expedient way of modifying the present rule, without making any material alteration of the regulations at present in force respecting defaulting tenants.

Instead of the power given to proprietors of land to oust their farmers, without any previous application to the courts of justice, it would be sufficient that it should be necessary for them to proceed against the defaulter under the first six clauses of Section 15, Regulation VII. 1799, when, if the defaulter be taken into custody, and the arrear demanded be proved against him, the proprietor might be allowed to resume the farm; and should he not be taken into custody, or attend after an *ishtihar*, similar to that directed in Section 2, Regulation IV. 1793, the proprietor might be called on to shew cause for ousting the farmer, and, after an enquiry *ex-parte*, if proving the farmer to be in balance, might be empowered to resume the farm, and left to recover the amount of the arrear by a regular suit. The immediate enquiry which is made into suits under Regulation VII. of 1799, would prevent the proprietor from being a sufferer by this mode of proceeding, which would, at the same time, form a protection to the farmer against the present undefined power of the proprietor, and would be the means of preventing many serious affrays and breaches of the peace.

There is also another way in which it appears to me that the abuse of this rule may be corrected. It is provided in Sections 15 and 16 of Regulation V. 1812, that if any attachment of property of any tenant of whatever description, whether under-farmer, *ryot*, or dependant *talookdar*, shall have been made, that the tenant, if disputing the justness of the demand, shall bind himself to prosecute; and on his doing so, that the attachment shall be immediately withdrawn, but no notice whatever is taken of the attachment or resumption of the *whole* farm. A clause to that effect, requiring the farmer to enter into a bond to the judge to prosecute within the given time the demand of arrears, would effectually prevent the proprietor from exercising improperly the power of resumption: for it seldom, or perhaps never, happens that the personal property of a farmer is attached for arrears, which must be very trifling indeed to admit of their being liquidated by that process.
Zillah Rajeshahye, Dewanny Adawlut, 30th September, 1812.

Reply to the Judge of Zillah Rajeshahye.

SIR,

I am directed by the Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 30th September last, with the proceedings which accompanied it, relating to the complaint of Ramnath Roy *v.* Dostmahomed Khan, and to communicate to you the following orders and observations in reply.

2. The Court remark, that the orders of the late judge, Mr. Cornish, on the case, appear to have proceeded upon a construction of the seventh clause of Section 15, Regulation VII. 1799, according to which, if a landholder, alleging his tenant to be in arrear, think fit to take upon himself to attach his tenure, the tenant is bound to give up his possession; and should the tenant deny that he is in arrear, and refuse to quit, the courts of justice are obliged, upon application from the landholder, to cause the tenant to be removed, and the tenure given up to the landholder, without any previous investigation into the justice of the landholder's claim. The court cannot acquiesce in this construction of the clause in question, which, they observe, merely declares that a landholder may oust his defaulting tenant without application to the courts of justice; and leaves entirely open the question, what course is to be pursued if the tenant shall deny that he is a defaulter, and incur the responsibility of refusing to quit his tenure. That question is to be resolved independantly of the clause under consideration, and the Court are clearly of opinion, that under the circumstances supposed, the landholder must have recourse to his legal remedies of distraint, summary suit, or regular action. The Court, indeed, regard the clause quoted, so far as it is applicable to such cases, to be merely declaratory of the right possessed by landholders, in common with all other claimants, to pursue their just demands by peaceable means; and to have been intended, not to confer any powers on landholders in addition to those which they previously possessed upon general principles, and by the usage of the country; but to give confidence to landholders in the lawful pursuit of their just claims, and to discourage undue opposition on the part of the tenants; by satisfying the former, that they would be in no danger of being treated as wrong doers, in consequence of the just and peaceable exercise of their powers; and making the latter sensible, that in resisting rightful claims, until prosecuted in the courts of justice, they would render themselves liable to costs and damages. The Court are accordingly pleased to authorize your proposed review of the late judge's order in the case.

The Court direct me to add, that they trust the construction above given of the seventh clause of Section 15, Regulation VII. 1799, will obviate the inconveniences which have been experienced from the opposite construction of it, upon which the late judge appears to have acted; and that the Court will take into their future consideration the modifications of the clause in question, which you have suggested.

November 12, 1812.

No. 114. 1807. Reg. IX. Sec. 23.

The Court determined, (on a reference from the Patna court of circuit,) that the courts of circuit at large are empowered by the Regulations to annul commitments made by the magistrate, and to dismiss charges pending before the magistrates, when such commitments and charges shall appear to be clearly and manifestly unfounded.

Resolutions on difference between the magistrate of Tirhoot and Patna court of circuit, recorded 26th November, 1812, Nizamut Adawlut.

November 26, 1812.

No. 115. 1812 Reg. V. Sec. 26.

The judge of *zillah* Juanpore was informed, on the 3d December, 1812, in answer to a reference transmitted through him from the assistant judge, that the Court were of opinion, that in cases requiring the appointment of a manager of joint and undivided estate, under

the provisions of Section 26, Regulation V. 1812, endeavour should, in the first instance, be made to prevail on one of the family, or some friend of the sharers, to undertake that duty gratuitously; but that in the event of its being necessary to make a pecuniary compensation to the person appointed to act as manager, the amount of such compensation must be fixed, on consideration of the circumstances of each case, by the judge making such appointment: and that the manager so appointed must account to the several proprietors for their respective profits arising from the estate, after discharging the public revenue, (to be paid to the collector in the same manner as the payment was before made by the proprietors,) and deducting the amount of the compensation which he may have been authorized to receive.

December 3, 1812.

No. 116.
1812
Reg V. Sec 21.

The judge of *zillah* Midnapore was informed, on the 24th December, 1812, that the Court considered it to be within his discretion to make the reference directed in Section 21, Regulation V. 1812, either to the collector of Midnapore, or to the collectors of Burdwan and Hidgellee, as he might, in each case, deem expedient.

December 24, 1812.

No. 117.
1808
Reg. IX. Sec 3.

The Court determined that the proclamation prescribed in Section 3, Regulation IX. 1808, can be issued, only against persons charged with *dacoity* or gang robbery, to which the provisions of the regulation are expressly directed.—Letter to the magistrate of Etawah, rejecting proposition to proclaim two persons charged with being concerned in an attack on Mr. Halhed, attended with murder and wounding.—Nizamut Adawlut, 21st January, 1813.

January 21, 1813.

No. 118.
1808.
Reg. IX. Sec. 14.

The Court are of opinion, that the provisions of Section 14, Regulation IX. 1808, can be considered applicable only to the case of harbouring or aiding *dacoits*, proclaimed in conformity with Section 3, of that Regulation.—Letter to magistrate of Midnapore.—Nizamut Adawlut, 25th January, 1813.

January 25, 1813.

No. 119.
1812
Reg. XX. Sec. 2.

The Court are of opinion, that copies of deeds brought for registry, as directed in Section 2, Regulation XX. 1812, being intended merely for record, should be admitted to be drawn out on plain paper.

References, from the judges of Backergunje and Rajeshahye, Proceedings Sudder Dewanny Adawlut, 28th January, 1813.

January 28, 1813.

No. 120.
1807.
Reg. IX Sec. 23.

The Court decided, that the courts of circuit, under Section 23, Regulation IX. 1807, are competent, if they think a magistrate's order (though within the magistrate's competency) improper or unjust, to annul the same, and direct release or commitment of the defendant.

See case of Hyder, Proceedings Nizamut Adawdut, 8th March, 1813, Persian Department.

March 8, 1813.

In the case above mentioned, the Court likewise determined, that a magistrate may decide and pass sentence of punishment, without reference to the court of circuit, under the section quoted in the margin, provided he does not exceed his competency under Section 19, Regulation IX. 1807.

March 8, 1813.

No. 121.
1793 Reg XLIX Section 4. Benares, 1795 Reg XIV Sec 2. C. C. P 1803 Reg XXXII. Sec 4

The Court are of opinion, that the restriction contained in Section 6, Regulation XIV. 1805, from hearing suits in which the persons therein specified are parties, is not applicable to cases in which the cause of action has arisen subsequently to the conquest of Cuttack. (14th October, 1803.)

No. 122.
1805. Reg XIV. Sec 6

Reference from the senior judge of the Calcutta court of appeal, recorded 17th March, 1813, Sudder Dewanny Adawlut.

March 17, 1813.

Extract from a letter from the Moorshedabad Court of Circuit, dated the 20th January, 1814.

No. 123.
1793. Reg. IX. Sec 47.

3. By the *futwa* of the law officer, the prisoners are acquitted of the *dacoity* and murder, but are convicted of being receivers of stolen property . in this *futwa* I concur.

4. But a doubt has arisen in my mind, whether persons committed and tried under a specific charge, can be sentenced to punishment for a distinct crime for which they have neither been committed nor tried : I have, therefore, refrained from passing any sentence, and refer the case and trial for the orders of the Nizamut Adawlut.

Extract from the Proceedings of the Nizamut Adawlut, under date the 20th March, 1813.

Present : H. Colebrooke, Esq., Offg. Judge.

On the subject of the doubt expressed in the 4th paragraph of Mr. Brooke's letter, the Court observe, that they are not aware of any objection to sentence a prisoner, convicted as an accessary. under an arraignment as a principal for the same offence, or under a conviction for a less offence ; when arraigned for a greater one of the same nature, and upon the same facts ; and accordingly the Court would have no objection in the case in question, were the prisoners pronounced fully convicted, to sentencing them to punishment for receiving stolen property, knowing it to be stolen, when they were charged with being concerned in stealing. The Court remark at the same time, that if the facts, or the nature of the crime charged, were different, it would be not regular nor just to convict the prisoner of a charge, against which he had not an opportunity of defending himself.

March 20, 1813.

The Court are of opinion, that the magistrate of Benares is competent to sentence the watchmen, referred to in Section 28, Regulation XVII. 1795, to corporal punishment for gross neglect or misconduct in the discharge of their duties, to the extent of the authority vested in him by Section 6, Regulation III. 1812; but as the magistrate is already empowered, under the first mentioned section, to remove watchmen when found inefficient, and to appoint others in their stead, the Court expressed a hope that he would not often see

No. 124.
1795 Reg XVII Sec. 28.

occasion to exercise the power of inflicting corporal punishment.—Letter to acting magistrate of city Benares.

March 25, 1813.

No. 125.
1793 Reg VIII Sec. 51, Clause two, Sec. 52.

The Court are of opinion, that the penalties prescribed in the cases of exaction by *zemindars* or other actual proprietors of land, mentioned in these sections must be considered exclusive of the refund of the sums proved to have been illegally levied.—To Calcutta court of appeal.

April 22, 1813.

No. 126.
1812 Reg. V Sec. 21.

In reply to a reference made by the judge of *zillah* Furruckabad, the Sudder Dewanny Adawlut, on the 29th April, 1813, determined that all summary suits instituted under Section 21, Regulation V. 1812, must be referred to the collector for report, provided he be on the spot; but that, as the express object of the rule is to expedite the decision of such suits, the reference is by no means necessary, if the collector be absent from the *sudder* station.

April 29, 1813.

No. 127.
1808 Reg IX. Sec 3

On a reference from the magistrate of Agra, the Court determined that the proclamation in this section cannot be issued against persons inhabitants of a foreign territory.

Reference from acting magistrate of *zillah* Purnea, 2d December, 1813.

Ditto Allahabad joint magistrate, 8th March, 1815.

Ditto Benares court of circuit, (communicated to Government,) 5th April 1815.

July 1, 1813.

To the Judge of Zillah Mymensing.

No. 128.
1793 Reg VII Sec 15, Clause 5, 6, and 7.

I am directed by the Sudder Dewanny Adawlut, to acknowledge the receipt of a letter from you, dated the 22d Ultimo, with its enclosures, and to acquaint you that judgments for arrears of rent, passed under the fifth clause of Section 15th, Regulation VII. 1799, and not satisfied within the current Bengal, Fussily, or Willaity year, by the confinement of the defaulting tenant and his security, under that section, or by the attachment of the defaulter's tenure, as authorized by the sixth clause of the above section, may, under the seventh clause of same section, be enforced on application to the *dewanny adawlut*, as therein directed, at the expiration of the Bengal, Fussily, or Willaity year for which the arrear may have been adjudged, by the sale of the defendant's *talook* or other transferable tenure of the defaulter, for the rent of which such judgment may have been passed. But that you were not warranted in applying to the Board of Revenue, to cause the sale of the tenure upon the mere allegation of a balance being due, without any enquiry.

The Court must express their regret at learning that you have followed, for so long a period, a practice so injurious to tenants.

July 8, 1813.

No. 129.

The judge of *zillah* Nuddea, having ordered certain lands to be sold at his court-house, under this section, was informed through the Calcutta court of appeal, that all sales of land in execution of judgment, should be made, under the general regulations, through the Board of Revenue.

1799 Reg VII. Sec. 15, Clause 7. 1793. Reg. XLV. Sec. 17. 1793 Reg. IV. Sec. 7.

See also regarding sale of *lakhiraj* lands under this section, letters to the acting judge of *zillah* Cuttack, 13th May 1813, in answer to a letter from him, reporting that he had sold such lands at the court, under Section 7, Regulation IV. 1793.*

July 15, 1813.

Letter from the Calcutta Court of Appeal, dated 13th June, 1813.

No. 130.

1799. Reg. VII.

We have the honor to submit, for the consideration and orders of the Sudder Dewanny Adawlut, the following copies of records, in compliance with a request made by the judge of *zillah* Nuddea, under the provisions of Section 11, Regulation X. of 1796.

No. 1. Copy of a petition of Bykuntnauth and Cossynauth Paul Chowdry, plaintiffs, dated 21st April, 1813.

No. 2. Ditto of answer of Ramuschunder Mookerjee, defendant, dated 26th April, 1813.

No. 3. Ditto of *kubooleut* of defendant, dated 16th Assaur 1214, B. S.

No. 4. Ditto of proceedings, held by Mr. Shakespear, dated 26th April, 1813.

No. 5. Ditto petition from defendant to the *zillah* court.

No. 6. Ditto from plaintiff to the *zillah* ditto.

No. 7. Ditto ditto, dated 29th March, 1813.

No. 8. Ditto Persian proceedings of the *zillah* court of Nuddea, dated 21st April, 1813.

No. 9. Copy of a petition from plaintiff to the *zillah* court, dated 10th March, 1813.

No. 10. Ditto ditto, from defendant to the *zillah* court, dated 8th April, 1813.

No. 11. Copy of a petition presented to this court by defendant.

No. 12. Copy of Persian proceeding, dated 24th May, 1813.

No. 13. Copy of a precept from the Calcutta provincial court of appeal, dated 24th May, 1813.

No. 14. Copy of a letter from Mr. Shakespear, dated 26th May, 1813.

No. 15. Copy of a letter from the Calcutta provincial court of appeal, dated 5th June, 1813, and of the reply thereto, from Mr. Shakespear.

2. Adverting to the very great arrears of more important public business urgently requiring our uninterrupted attention, and that the order to which the *zillah* judge has objected, is very fully explained by our register's letter to him, dated the 5th instant; we do not think it necessary to discuss the merits of Mr. Shakespear's answer to that letter, under date the 10th instant, but merely content ourselves with stating, that we admit the oversight pointed out in the 3rd paragraph of Mr. Shakespear's remarks.

The superior Court will observe, that our order, to which the judge of *zillah* Nuddea objects, does not reverse his decree, or at all interfere with the merits of it. It has merely directed that this decree shall and ought to be satisfied by the payment of the

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* Modified, however, by Reg. VII. 1825.

sum demanded, with interest, and that such payment ought to be accepted, and the sale of the *putnee talook* desisted from.

To concur in opinion with Mr. Shakespear would be to suppose, that the object of the suit and the summary decree is, not to liquidate the balance, but to eject the *putneedar*.

To the Calcutta Court of Appeal, in reply to the above.

The Court of Sudder Dewanny Adawlut, having had under their consideration the correspondence and other papers submitted with your letter of the 13th ultimo, direct me to communicate to you the following observations and orders on the subject of them.

The Court remark, that by their circular orders of the 15th March, 1806, a special appeal is declared to lie to the provincial courts from the orders and judgments of the *zillah* and city courts, in all cases wherein a regular appeal may not lie; and that, under this construction of the regulations, your court was clearly competent to revise and amend the summary judgment passed by the judge of *zillah* Nuddea against Ramuschunder Mookerjee.

The Court are further of opinion, that the sole intent of the summary process, provided by Regulation VII. 1799, being to enable proprietors of land to recover arrears of rents, the judge, upon the said Ramuschunder tendering to him the amount of the arrear adjudged to be due, should have received the same, and have desisted from the sale of his *talook*.

The Court remark, that in all cases the summary judgment is only provisional, and open to correction by a more deliberate investigation; and that in the particular case upon which the reference has arisen, the defendant appears to have claimed credit for the sum of 656 Rupees, upon several items which the judge did not consider a proper subject of inquiry in a summary proceeding. that under such circumstances to bring the defendant's tenure to sale, although he had tendered the amount awarded against him, would be a great and unnecessary hardship.

Whether, upon the *zemindar*, in such a case, establishing, by a regular suit, that a balance was due from the *talookdar* at the end of the year, he (the *zemindar*) would be entitled, in consequence of this failure in his engagements on the part of the *talookdar*, to insist upon the sale of the tenure, is a separate question, respecting which the Court in their present orders mean to give no opinion; but which they observe will be duly considered whenever it shall arise.

The Court observing, that the judge of *zillah* Nuddea advertized the *talook* for sale at his court-house, further direct that you acquaint him for his future guidance, that all sales of land in execution of judgments should be made under the general regulations through the Board of Revenue.

July 15, 1813.

N. B. See further decision of 27th September, 1814, corresponding with this, in summary appeal, Sutcowry Bhose v. Rajah of Burdwan.

No. 131.
1798. Reg. I. Sec. 2. 1806. Reg XVII. Sec. 8.

On a reference occasioned by a difference of opinion between the provincial court for the division of Calcutta and the judge of *zillah* Nuddea, the Court of Sudder Dewanny Adawlut issued a circular order, dated 22d July, 1813, (No. 37 of Circular Orders Sudder Dewanny Adawlut, page 27, Part I. Vol. I. Baptist Mission Press Edition,) containing a construction of the provisions of Section 2, Regulation I. 1798, and Section 8, Regulation

XVII. 1806, relating to the foreclosure of mortgages and conditional sales under deeds of *Bye-bil-wufa and Kut-cabuleh.*

July 22, 1813.

Extract from a letter to the Calcutta Court of Circuit, dated 3d August, 1813.

No. 132. 1793. Reg. XLIX. Benares, 1795. Reg XIV. C. C P 1803 Reg. XXXII.

"From the magistrate's (of the 24-Pergunnahs) letter of the 28th June last, the Court understand him to have requested the reference in consequence of his having construed the orders of your court upon the case to imply, that the act of assembling a number of armed men, with the intention of committing an affray, is not a misdemeanor punishable under the Mussulman law and the Regulations · the orders of your court do not appear to the Nizamut Adawlut necessarily to lead to the above conclusion ; but to guard against misconception on so important a point, they deem it proper to state their opinion, that the act in question is clearly a misdemeanor."

August 3, 1813.

No. 133. 1811 Reg. I. Sec. 7 and 8.

The courts of circuit apprized, by a circular order of this date, (No. 124, page 95 of Vol. I. Cir. Or. N. A. Baptist Mission Press Edition,) that the provisions of those sections were only applicable to cases, wherein it shall appear that the person convicted knew that plundered or stolen property was obtained by theft or robbery *at the time* of receiving or purchasing the same.

August 12, 1813.

No. 134. 1797 Reg IV. Sec. 11. 1803. Reg VII. Sec 35.

On a reference from the magistrate of *zillah* Agra, the Court of Nizamut Adawlut, in consideration of the circumstances and rank in life of the prisoners, authorized him not to inflict *godna* on Munsa and other prisoners, convicted of assembling armed men, and occasioning repeated affrays, in which several persons were killed and wounded, and sentenced to perpetual imprisonment in the jail at Agra without fetters or hard labour.

August 19, 1813.

To the Acting Judge and Magistrate of Zillah Cuttack.

No. 135. 1793. Reg. XXXVI. Sec 2.

I am directed by the Sudder Dewanny and Nizamut Adawlut, to acknowledge the receipt of a letter from you, dated the 3rd instant, with inclosure from the register at your station; and in reply to communicate to you the opinion of the Court, that you are not authorized, under the regulations, to register any description of deeds required to be registered by the register, and the Court desire that you will discontinue the practice in future.

The Court are further of opinion, that the offices established for the registry of deeds, by Section 2, Regulation XXXVI. 1793, should be fixed at the *sudder* station of the district.

3. You are desired to acquaint Mr. Ward accordingly, pointing out to him, at the same time, that an express provision is made for the occasional absence of a register from his station, by Section 15 of the regulation above cited ; in conformity to which, he is at liberty to appoint a deputy to act for him, during the period of his deputation as joint magistrate at Jugurnath.

4. A reference will be made to Government on the subject of the 9th and 10th paragraphs of your letter, and the orders of Government will be duly communicated to you.*

5. In answer to the question contained in the 11th paragraph of your address, I am directed to acquaint you, that all prisoners committed by the joint magistrate for trial before the court of circuit, should be forwarded to the *sudder* station, and brought to trial at the regular session of the district, in like manner with prisoners included in commitments made by yourself.†

August 19, 1813.

No. 136.

1793. Reg. III Sec. 14. 1803 Reg. II Sec. 18. Cl 3.

Extract of a Letter to the Acting Judge of Zillah Purnea, dated the 28th October, 1813.

"A decree not carried into execution, at the time of its being passed, may be executed on application being made for that purpose, within twelve years from the date of the decision, after calling upon the opposite party to show cause why the judgment should not be carried into effect against him; should the party, however, holding the decree, neglect to make application for enforcing the judgment in his favour within the period above specified, the Court are of opinion, that the application ought not to be admitted, without his establishing, to the satisfaction of the court, good and sufficient cause for the delay."

October 28, 1813.

No. 137.

1793 Reg. IX. Sec 54.

Extract of a Letter to the Chief Secretary to Government, under date the 11th November, 1813.

"Whether a trial before the court of circuit can, under any circumstances, be conducted in the absence of the accused, the Court remark, is a point which, as far as they are aware, is entirely novel, and upon which the regulations are silent. Upon general principles, the fitness of requiring the actual personal attendance of the accused in the great majority of cases which fall under the cognizance of the courts of circuit, is obvious; but the court are of opinion, that in the less serious cases, circumstances might exist to warrant exception to the rule. If for example, in the case under discussion, the accused had been a female, who, according to the usages and prejudices of the country, could not, with propriety, personally attend a court of justice, her personal attendance, in the judgment of the Court, might have been very properly dispensed with. Under the difficulty, however, the Court are of opinion, that the judge should have proceeded in conformity to the rule contained in Section 54, Regulation IX. 1793, by referring the question to the law officer of the court of circuit. Supposing the law officer to have declared the accused warranted in his application by the Mussulman law, it would have been the officiating judge's duty to complete the trial, referring the case to the Nizamut Adawlut, if a reference. On the other hand, if the law officer declared either that the accused was not entitled to the indulgence, or that the determination on the point rested with the judge, as the judiciary delegate of the sovereign, it would have been competent to the officiating judge to have admitted or rejected the application, as he might have deemed just and consistent with proper principle."

November 11, 1813. *Nizamut Adawlut Proceedings.*

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* Further provisions for the registry of deeds have been made by Regulation IV. 1824.

† Superseded by the provisions of Regulation XVII. 1825.

Kishen Mungul Dos and Joy Kishen Ghose, v Kutcha Alee Khan. No 138

The Mahommedan law declares, that a person cannot sell property not in his possession 1793 Reg IV Sec 15 1801

Q Shall we adopt the Mahommedan law in such cases, or not? The equity of the present case is against the admission of a special appeal Reg III Sec 16 Cl 1

Determined by Colebrooke and Fombelle, that the court are not bound by the Mahommedan law in such cases, 11th December, 1813

December 11, 1813

Extract from the Proceedings of the Nizamut Adawlut, under date the 16th December, 1813. No. 139.

The Court are of opinion, that commitments for forgery of documents or instruments exhibited in the civil court, are not restricted to the civil courts, in which the alleged forged documents may have been exhibited, but that the magistrates are bound, by virtue of their general powers, to take cognizance of such charges, on the prosecutions of individuals 1801 Reg III

The Court, however, are not aware of any objection to the magistrate s suspending his proceedings in any case, in which he may judge that it will be conducive to justice to allow a civil case to be determined before the criminal investigation is pursued the Court, accordingly, in the present case, authorize the magistrate to suspend his proceedings, until the appealed cause now pending before the Sudder Dewanny Adawlut shall be determined by that Court, which the Court remark may shortly be expected, under the resolution to which that Court have this day come, to take up the suit without regard to the order of the file

In coming to the resolutions above recorded, the Court concur with the magistrate, in thinking that considerable inconvenience may be experienced from the power allowed to parties, under the general regulations, to prosecute charges of forgery, pending civil suits, in like manner, as inconvenience was heretofore experienced from the same power being possessed by individuals, in cases of perjury, until they were deprived of that power by Regulation III 1801 The Court will accordingly be glad to receive from the magistrate, through the prescribed channel, the draft of such provisions as he may deem proper for extending to cases of forgery, the principle on which Regulation III 1801, relating to charges of perjury against parties in civil suits and their witnesses, is founded.* 1801 Reg III

The Court only think it further necessary, in this case, to point out to the magistrate the mistake into which he appears to have fallen, in supposing that instruments which the civil court may deem forged are to be returned to the parties under Section 6, Regulation IV 1793 The Court remark, that this section refers to documents which a court may refuse to file as not being relevant, or not produced in proper time, or for other good and sufficient cause, but cannot be understood as applying to documents filed, but proved 1793 Reg IV Sec 6 Benares 170, Reg VIII Sec 2 C C Pro 1809 Reg III Sec 7

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* But this construction has been superseded by a later construction under date the 13th of July 1827 No 4 of page 101 See also the sentence of the Nizamut Adawlut in the case of Government against Bungsee Dhur Chowdree and others page 203 of the 3d Vol of the Nizamut Adawlut Reports

or suspected upon trials to be forgeries; to return which to the parties producing them, would obviously often tend to defeat justice.

December 16, 1813.

No. 140.
1813.
Reg VI. Sec. 5.

A reference having been made by the judge of zillah Mymensing, the Sudder Dewanny Adawlut resolved, on the 23d December, 1813, that a reasonable period, according to circumstances, should be allowed for the parties to appear in person, of by *vakeel*, and bring forward their proofs, as required by the *perwannahs* addressed to them under the first clause of Section 5, Regulation VI. 1813, and that in the event of their failing to attend within such period, so as to admit of the requisite investigation being made, and the attachment of the land in dispute, appearing necessary for preventing a breach of the peace, this measure might be adopted in the manner provided for the abovementioned clause of the regulation cited in the margin.

December 23, 1813.

No. 141.
1808
Reg X. Sec. 7.

On a reference from the judges of the Patna court of circuit, the Nizamut Adawlut, on the 20th January, 1814, determined that, under the provisions contained in this section of the regulation, the superintendent of police is authorized to make an application to be furnished with a copy of proceedings in trials by the courts of circuit, and that it is incumbent on those courts to comply with such applications.

January 20, 1814.

No. 142.
1812
Reg V. Sec. 26.

Letter from the Chief Secretary to Government, dated the 11th September, 1813.

I am directed to desire that you will lay before the Sudder Dewanny Adawlut the accompanying copy of a letter and its enclosure from the Board of Commissioners, and acquaint the Court, that the Right Honorable the Governor General in Council is desirous of being furnished with the sentiments of the Court regarding the provision contained in Section 26, Regulation V. 1812, and on the different points noticed in the Board's letter. In the mean time His Lordship in Council remarks, that it never could have been the intention of Government that the lands committed to the charge of managers by the courts of judicature, under that rule, should be exempted from sale, on account of arrears of public assessment; nor is he aware that the wording of the rule will bear that construction.

Copy of a Letter from the Board of Commissioners for the Western Provinces to the Right Honorable the Governor General in Council, dated 20th July, 1813.

We do ourselves the honor of submitting for your Lordship's orders, the accompanying copy of a letter from the collector of Benares, on the subject of an estate to which a manager has, at his application, been deputed by the *zillah* court of Juanpore, under Section 26, Regulation V. 1812.

2. Several points arise out of this letter, on which the Regulation appears to be not sufficiently explicit, and on which we, therefore, beg leave to solicit your Lordship's instructions.

3. In the first place, it occurs to us, that some defined rule would be expedient for proportioning the scale of the expense of management to the income of the estate. On the present occasion, the establishment fixed by the Court for the manager amounts to 480 rupees on a village assessed at only 1,651 rupees, or nearly one-third of the entire *jumma*.

4. Some precise rule would also appear to be indispensable for defining the responsibility of the manager, and the right of interference and control, if any, which the revenue authorities are to exercise over him ; or if not, the mode in which they may be able to bring him to a prompt and effectual account. In the present instance, your Lordship will observe, that of two years *jumma*, not a single fraction of a rupee has been paid into the public treasury.

5. It might also be expedient to define more distinctly the nature of the security which is to be required from such managers ; whether mere personal bail for their appearance, or an absolute undertaking for the money which may come into their hands. The former would scarcely be a sufficient hold upon them, if exempted from all direct control of the revenue authorities.

6. A further question arises, and for which principally the present reference was brought forward by the collector,—Whether lands under charge of such managers are liable to be sold for balances accruing on them during such management ? From the silence of the regulation on this point we infer, that it was intended not to exempt such estates from the general liability of all land. There would appear, at the same time, to be no small hardship in having recourse to this extreme remedy for the payment of a balance arising on a management, over which, not only the proprietor himself, but even the revenue authorities, have no jurisdiction.

Copy of a Letter from the Collector of Benares to the Secretary to the Board of Commissioners for the Western Provinces, dated 29th June, 1813.

I beg leave to enclose a statement of proposed sale of Mouza Anjoorpoor, Pergunnah Bullea.

2. Conceiving it necessary, that the Board should be informed of the particulars of this estate and its balance, previously to issuing orders for the usual advertisement of sale, I request you will acquaint them, that in consequence of the perpetual disputes between the *malgoozars* and *putteedars*, to which cause alone was to be attributed their constant default, I made application to the court of Juanpore, under Section 26, Regulation V. 1812, for the appointment of a *serberakar* to collect the rents, and discharge the public revenue from the estate. The Court, as will be observed from the enclosed copies of the proceedings, complied with my *derkhaust* ; and appointed a *serberakar* ; but from that time to the present, neither the balances of 1210, nor the current *kists* of 1220 Fussily, have been paid into the *mofussil* treasury, or remitted from the court to this. The amount of balances at present outstanding against the estate, is for 1219 Fussily, 1651 Rupees.
1220 ditto, 1651 ditto.

3. The section above quoted contains no directions as to the measures to be pursued when balances of public revenue shall occur under the management of *serberakars*, and conceiving that the general tenor of the revenue code, namely, that the lands of proprietors are liable for their revenue engagements, cannot be effected by this regulation, I have proposed the estate for sale; but I have to solicit the Board's special orders on this case, to serve for my guidance in future.

4. In the interim, I have applied to the *adawlut* to know the causes of the failure of the *serberakar*, and have requested the court to take immediate measures to make good the public dues, and to prevent such delay in future.

5. I request that the Board will favour me with their opinion, whether *serberakars* appointed by the courts, under the above quoted section and regulation, either on the application of the revenue authorities, or of individuals, should not be required to execute the usual revenue engagements of *cubooleut* and *kistbundee*, &c., by which they bind themselves to the payment of the public instalments at stipulated times, and which documents may be produced against them as occasion shall require.

Letter to the Chief Secretary to Government, dated 3d February, 1814.

I am directed by the Court of Sudder Dewanny Adawlut, to acknowledge the receipt of your lettter, under date the 11th September last, desiring the sentiments of the Court on the points noticed in a letter from the Board of Commissioners for the Upper Provinces, dated the 20th July, 1813.

1812 Reg. V. Sec. 26.

2. The Court are of opinion, that the public sale of lands for arrears of revenue, in all cases wherein the Governor General in Council, or the Board of Revenue, or Board of Commissioners, in cases left to the discretion of those Boards, may judge it proper to direct such sales, is not restricted or effected in any respect, by the appointment of a manager under Section 26, Regulation V. 1812.

1800. Reg I Sec 6. 1805 Reg. VIII Sec. 29, Clause 13 1803. Reg LII Sec 5, Clause 3. 1793. Reg. VIII. Sec. 25.

3. In forming this opinion, the Court have considered the terms and intention of the abovementioned section. They have also adverted to the provisions of Section 6, Regulation I. 1800, and of the thirteenth clause of Section 29, Regulation VIII. 1805, in cases wherein guardians to proprietors of joint undivided estates are appointed by the courts of judicature, as well as to the third clause of Section 5, Regulation LII. 1803, applicable to managers nominated by the collectors, and approved by the Board of Commissioners, in the cases provided for by that section, and corresponding with Section 25, Regulation VIII. 1793, in force for the Lower Provinces, till rescinded by Section 2, Regulation XVII. 1805. In noticing Section 5, Regulation LII. 1803, however, the Court judge it of importance to add, that a doubt may be entertained whether this section, though not repealed by Regulation XVII. 1805, confined to the Lower Provinces, has not been virtually superseded by Section 26, Regulation V. 1812, and beg leave, therefore, to suggest the expediency of determining this point in some future regulation. The Court presume, that Section 5, Regulation LII. 1803, was acted upon in the Upper Provinces, before the promulgation of Regulation V. 1812, but are not informed whether the Board of Commissioners have considered it to be subsequently in force, or superseded by Section 26 of that regulation.

1805. Reg XVII. Sec. 2

4. The Court entirely concur with the Board of Commissioners, in the expediency of establishing a rule for proportioning, as far as practicable, the expense of management to the extent and produce of the estate, when a manager may be appointed under Section 26, Regulation V. 1812; and beg leave to suggest, that the Board of Commissioners and Board of Revenue be consulted on the tenor and limitations of the rule which may appear proper to enact for this purpose.

5. With regard to the responsibility of managers of estates appointed under Section 26, Regulation V. 1812, the Court are of opinion, that as it is not particularly defined in that Regulation, it must be considered that of an agent, acting for the benefit of his principal, and bound to a faithful discharge of the trust committed to him. The Court are further of opinion, that "proper security," directed to be taken from managers appointed under the section above mentioned, is not restricted to personal bail for appearance, but extends to security for a faithful account of the manager's receipts; and should be proportionate to "the extent thereof," as declared in Regulation V. 1799, Section 6, and Regulation III. 1803, Section 16, clause 6, with respect to administrators appointed by the civil courts in the cases therein provided for.

6. With respect to a further point noticed by the Board of Commissioners, viz. "the right of interference and control, if any, which the revenue authorities are to exercise over a manager appointed by a court of judicature, under Section 26, Regulation V. 1812," the Court see no reason to doubt, that, in the event of any arrear of the public revenue, or in any other case wherein the revenue authorities are authorized to interfere under the general regulations, they have the same right of interference in an estate under charge of a manager appointed in pursuance of Section 26, Regulation V. 1812, as if the manager had been appointed by the proprietors of the estate. The Court, however, observe, that it would be proper to give notice to the *zillah* court, with a view to the removal of such manager, whenever the revenue authorities might not judge it proper to employ him in managing the estate, during an attachment for arrears of revenue or otherwise.*

February 3, 1814.

No. 143.

1798
Reg IX Sec 17 extended to Benares, by S 4, Reg XVI 1795
C C P 1803
Reg VI Sec. 17

In answer to a reference from the judges of the Patna court of circuit, the Nizamut Adawlut, on the 3d February, 1814, state it as their opinion, that the rule contained in this section being applicable to the superintendents of police in their capacity of magistrate, the calendars therein prescribed should be submitted monthly by those officers to the court of circuit of the division to which it may properly belong under the regulations to take cognizance of the cases comprehended in such calendars, with reference to the district in which the prisoners have been apprehended.

February 3, 1814.

No. 144.

1811
Reg I Sec 2, Clause 2 and Sec 3, Clause 3

The courts of circuit were cautioned, by a circular order, to observe the distinction between burglary in a dwelling house and in a warehouse, on which the difference of punishment depends, under the provision of these sections.†

February 24, 1814.

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* By Regulation V 1827, all attached estates are now placed under the management of the collectors.

† This distinction has been abolished by Regulation XII. of 1818.

No. 145.
1814.
Reg I. Sec 15 and 16

A reference having been made by the acting judge of Rajeshahye, through the Moorshedabad court of appeal, the Sudder Dewanny Adawlut, on the 19th March, 1814, determined, that under Sections 15 and 16, Regulation I. 1814, in the case of a person wishing to file several exhibits, or to procure the attendance of more than one witness, it is not necessary for such person to present a separate petition for leave to file each exhibit, or for a summons to be issued for each witness, but that a single petition may be admitted for two or more exhibits, or two or more witnesses, provided it be written on stampt paper of such a value as to secure Government the duty established on each exhibit that may be filed, or on each witness summoned.*

March 19, 1814.

No. 146.
1814
Reg. I. Sec. 15.

A reference having been made by the acting judge of zillah Rajeshahye, through the Moorshodabad court of appeal, the Sudder Dewanny Adawlut, on the 19th March, 1814, determined that what has been usually considered a distinct exhibit, whether composed of one or more sheets, would be admissable as such, under the section of the regulation cited in the margin.

March 19, 1814.

No. 147.
1799.
Reg 11 Sec 2.
Bareilly, 1803.
Reg VIII. Sec. 14 Clause third

On a reference from the Moorshedabad court of circuit, the Nizamut Adawlut, on the 31st March, 1814, stated it as their opinion, that by commencing the jail deliveries of the city early in each month, in the generality of cases wherein further evidence might be required, the judge would be able to procure it in sufficient time to admit of his completing the trial before the close of the month; but that should circumstances occur to render it impracticable for the judge holding a monthly jail delivery to dispose of any particular trial by the end of the month, such trial ought to be postponed for the judge whose duty it may be to hold the session for the ensuing month. Also that any miscellaneous business not completed before the end of the month should be made over to the judge holding the jail delivery for the following month.

March 31, 1814.

No. 148.
1803
Reg 11 Sec 5
Bengal, 1793
Reg. III Sec 8.
Benares 1795
Reg. VII. Sec. 7

The magistrate of Allahabad, on the complaint of A, ordered that B should give up to him his daughter, whom A alleged that he had married. The Benares court of circuit, considering that the case was not cognizable in the *foujdary* court, rescinded the magistrate's order, leaving the complainant the option of suing to prove his marriage in the regular suit in the civil court. On a reference by the magistrate, the court of Nizamut Adawlut, on 31st March, 1814, concurring with the court of circuit, stated it as their opinion that all suits or complaints relative to marriage were to be heard in the civil courts. The court at the same time stated that they were of opinion, that it was expedient to provide

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* This construction has been made law by Section 22, Regulation XXVI 1814.

a summary process for cases of a similar nature, and that they would accordingly include a provision for that purpose in some future regulation.

March 31, 1814.

No. 149.
1811
Reg VII. Sec. 2, Clause 3.

In reply to a reference made by the Moorshedabad court of circuit, the Nizamut Adawlut, on the 31st March, 1814, gave it as their opinion, that in cases of the nature mentioned in this clause of the section of this regulation, the *daragah* or other police officer could not be considered as authorized to apprehend the person accused, until he shall have completed the inquiry which he is required to make by that section ; and that with respect to the term " evidence" in the section in question, it was intended that the *darogah* should send the *written* evidence with the accused, at the same time taking the recognizances from the witnesses, in pursuance of Section 15, Regulation IX. 1807, to appear before the magistrate on a specific date.

March 31, 1814.

No. 150.
1803.
Reg. IV Sec. 10. Bengal, 1793
Reg V. Sec. 10 Benares, 1795.
Reg IX. Sec 6.

On a reference from the senior judge of the Bareilly court of appeal, the Sudder Dewanny Adawlut determined, on the 7th April, 1814, that under Section 10, Regulation IV. 1803, should it appear from an abstract statement of decided causes transmitted to the provincial court by a *zillah* judge subject to their control, that such officer had not adjudged on trial the prescribed number of causes, it is within their competency to require him to furnish an explanation of the same.

April 7, 1814.

No. 151.
1812.
Reg. III. Sec. 6.

On the 7th April, 1814, the Court declared, that the 6th Section of Regulation III. 1812, was applicable only to *chowkeedars*, or other description of village watchmen : and the magistrates not being empowered, by the regulations before in force, to inflict corporal punishment except in cases of theft, they judged it proper, in consideration of the stripes inflicted by the magistrate of Nuddea, to remit that part of the sentence which directed forfeiture of his arrears of salary.

April 7, 1814.

No. 152.
1810.
Reg. XIV. Sec. 5.

On a reference from the acting magistrate of Rungpoor, through the Moorshedabad court of circuit, reporting that he had proclaimed an offer of pardon to any person, not being a principal in a robbery which had been committed, who should discover his accomplices and give information leading to the recovery of the plundered property ; the Court of Nizamut Adawlut determined, that they could not sanction an offer of pardon without having before them the information required by clause second, Section 5, Regulation XIV. 1810, respecting the privity or other criminality of *the person* proposed to be pardoned.

The Court had before authorized a general offer of pardon, in some instances, wherein none of the offenders had been apprehended or known.

See letter to Patna court of circuit, 17th March, 1813, and acting magistrate *zillah* Rajeshahye, 21st January, 1813.

April 7, 1814.

No. 153.
1797.
Reg IV. Sec 8.
C C P 1803.
Reg. VII. Sec 24.

In reply to a letter from the Moorshedabad court of circuit the Nizamut Adawlut, on the 14th April, 1814, declared that the section of the regulation quoted in the margin had express reference to the case of a law officer of a court of circuit being prevented, by indisposition or otherwise, from attending that court whilst sitting at any *zillah* or city station; and that whenever the law officer, whose proper duty it might be, is prevented by illness or other cause from proceeding on the circuit, a report should be made for the information and orders of the Nizamut Adawlut.

April 14, 1814.

No. 154.
1814.
Reg I Sec. 11.

In answer to a reference made by the acting judge of *zillah* Furruckabad, the Sudder Dewanny Adawlut, on the 21st April, 1814, determined that *hoondees* must be written on stampt paper.

April 21, 1814.

No. 155.
1795
Reg XXXVIII.
Sec. 9.

In answer to a reference made by the *zillah* judge of Rajeshahye, through the Moorshedabad court of appeal, the Sudder Dewanny Adawlut declared, on the 21st April, 1814, that the rule contained in Section 9, Regulation XXXVIII. 1795, for levying fees on miscellaneous petitions, must be considered as superseded by the provisions contained in Section 18, Regulation I. 1814.

April 21, 1814.

No. 156.
1797
Reg VI Sec. 27
1803
Reg XLIII.
Sec. 20.

In answer to a reference made by the *zillah* judge of Rajeshahye, through the Moorshedabad court of appeal, the Sudder Dewanny Adawlut, on the 21st April, 1814, observed, that as Regulation I. 1814, is silent upon the deduction of 5 per cent. from the amount of all fees payable to the authorized *vakeels*, they concluded it was not the intention of Government to subject the *vakeels* to any charge beyond what they are liable to on account of the stampt paper to be used in granting receipts for their fees.

See also letter to the acting judge of *zillah* Furruckabad, dated 17th August, 1814.

April 21, 1814.

No. 157.
1799
Reg II Sec 6.
C C P 1803.
Reg VIII. Sec. 23

A reference having been made by the magistrate of *zillah* Nuddea, regarding the construction of this regulation, the Nizamut Adawlut, under date April 28th, 1814, determined that it directs that all guards having custody of convicts, who may appear to be guilty of a wilful neglect, should be immediately dismissed from the public service, and that it could not be understood to empower a magistrate to declare, by a public order, that such officers should never again be employed in the *zillah* court in any capacity whatever.

April 28, 1814.

No. 158.
1803
Reg. XXXII.
Sec 3.

In answer to a reference made by the judge of *zillah* Allahabad, the Sudder Dewanny Adawlut, on the 28th April, 1814, stated it as their opinion, that in the case of the expiration of the plaintiff's lease before the summary action for possession and damages is deter-

minod, though it may not be requisite or proper to adjudge possession to the plaintiff, equitable damages equal to the loss sustained by the plaintiff during the period of his lease should be adjudged.

April 28, 1814.

Bengal. 1793. Reg XLIX. Sec 3 Benares. 1795. Reg. XIV. Sec. 2.

In answer to a reference made by the judges of the Calcutta court of circuit, the Nizamut Adawlut, on the 19th of May, 1814, stated it as their opinion, that this clause, which requires proof on oath (not the prosecutor's oath exclusively) that the evidence of a witness is material to the cause, is exclusively applicable to the first case therein mentioned, viz. that of a witness duly summoned and not attending; and that in the two other cases mentioned, viz. of a witness attending and refusing to give evidence, or after having given evidence refusing to sign his deposition, no new proof is to be called for that the evidence of the witness is material.

May 19, 1814.

No. 159. 1793. Reg. IV. Sec. 6. Benares, 1795. Reg VIII. Sec 2. C. C P 1803 Reg. III. Sec. 7.

A reference having been made by the magistrate of *zillah* Nuddea, the Nizamut Adawlut, on the 20th May, 1814, determined that the rule contained in Section 10, Regulation XXII. 1793, was applicable to all suspected persons detained by the Magistrate under orders to furnish security.

May 20, 1814.

No. 160. 1793. Reg XXII Sec 10. Benares, 1795 Reg. XVII Sec. 10. C. C. P. 1803. Reg XXXV. Sec. 10.

Extract from a letter from the magistrate of Nuddea, under date the 12th May, 1814.

No. 161. 1803. Reg. LIII. Cl. 1. Sec. 9. 1793 Reg XXII. Sec. 10.

In the event of his reapprehension, and as a general reference for my future guidance in such cases, I beg leave to request the opinion and orders of the Court of Nizamut Adawlut, whether or not I should we warranted, under the provisions contained in clause the first, Section 9, Regulation LIII. 1803, to bring to trial before the court of circuit prisoners of this description (i. e. under requisition of security for good conduct, by order of the magistrate), who escape from jail or from the roads. I am induced to submit this question in consequence of an order passed by the senior judge of circuit at the last sessions, copy of which I take the liberty to transmit herewith. The prisoners in this jail of the abovementioned description are very numerous, and under this order of the senior judge, they are subject in fact to punishment merely nominal for breaking jail, of which offence the prisoner, Juggomohun Biswas, to whom Mr. Wintle's order refers, was convicted before me of having committed.

Extract from a letter to the magistrate of Nuddea, dated the 20th May, 1814.

"As the regulations at present stand, the Court consider the rule contained in Section 10, Regulation XXII. 1793, to be applicable to all suspected persons detained by the magistrate under orders to furnish security.

"The Court will, however, take some future occasion of submitting to Government the expediency of a further provision for the punishment of persons of this description,

who may escape from custody, and for whom a sentence of six months imprisonment may appear insufficient."*

May 20, 1814.

No. 162.
1803
Reg. II. Sec. 8.

On the 23d March, 1814, the senior judge of Bareilly provincial court, requested to be informed,

1st. Were the provisions of the treaty concluded with Názir Jung, the Nuwaub of Furruckabad, on the 4th June, 1802, declared to extend to the successors of that chieftain?

2d. If they were, how should the courts proceed during the minority of the present Nuwaub, Shoukut Jung, in cases of suits instituted against any of his dependents?

The Sudder Dewanny Adawlut, on the 26th May following, gave it as their opinion, in reply to the 1st question, "that the terms of the treaty concluded with the late Nuwaub Nazir Jung must be considered to extend to his successor Shoukut Jung, the present Nuwaub of Furruckabad;" and in reply to the 2d question, "that all suits properly referrible to him, (the Nuwaub,) should be referred, during his minority, to his guardian or principal manager."

May 26, 1814.

No. 163.
1814
Reg. I. Sec. 13.

In answer to a reference made by the Benares court of appeal, the Sudder Dewanny Adawlut, on the 2d June, 1814, communicated their opinion, that the duties prescribed in the section of the regulation cited in the margin must be levied on all appeals admitted after the 1st May, 1814, on the valuation stated in Section 14, of the said regulation.

June 2, 1814.

No. 164.
1814
Reg I 1810
Reg. XIII. Sec. 11

On a reference by the acting judge of *zillah* Furruckabad, the Sudder Dewanny Adawlut, on the 21st April, requested the orders of Government, "as to the mode in which the institution fee is to be refunded, under the provisions of Regulation I. 1814, in cases wherein the regulations authorize a return of that fee, either in whole or in part, to the party who may have paid the same." The following is an extract from Government's reply, dated 29th April, (par. 4,) which was communicated for general information, by circular letter of 2d June, 1814.

PAR. 4. It is likewise proposed to revise the rules contained in Section 11, Regulation XIII. 1810, there being grounds to believe, that the return of the whole or of a moiety of the institution fee, so far as respects cases before the *moonsiffs* and *sudder ameens*, has produced exactly the contrary effect from what was anticipated from those provisions. In the mean time, however, the Sudder Dewanny Adawlut is requested to issue a circular order to the courts of judicature, authorizing them to apply to the collectors to pay the whole or a moiety of the value of stampt paper, (on plaints instituted subsequently to the 1st May, 1814, which may be adjusted by *razeenamah*,) to the plaintiffs entitled to receive it in each case. Correspondent instructions will be issued to the Board of Revenue and Board of Commissioners.

June 2, 1814.

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* Provided for by Cl. 1, Sec. 5, Reg. XII. 1816.

The judge of zillah Mymensingh, having reported to the Sudder Dewanny Adawlut, that during the month of December, 1813, two causes were instituted under this regulation, but not referred to the collector, as the defendants were not apprehended; that Court, on the 19th June, 1814, returned for answer, that they were not aware of the necessity for the apprehension of a defendant in a suit instituted under this regulation previous to such suit being referred to the collector, but that after summons had been duly served on the defendant the reference in question might consistently be made.

June 9, 1814.

No. 165.
1812.
Reg. V. Sec. 21.

The judge of *zillah* Rajeshahye, having been called upon to report the reasons why he had referred no suits instituted under the provisions of this section of the regulation to the collector during the months of December, 1813, and January and February, 1814, stated "that he had referred several soon after the promulgation of the regulation, but that he invariably found, on his proceedings being returned, a petition was presented to the court by the person dissatisfied with the collector's opinion, and the collector not having passed any definite order on the case, he was frequently compelled to go over the whole of the papers, and not only to pass his own decision on the merits of the case, but to combat the reasoning of the collector in cases wherein it differed from his own; in consequence of which he desisted from making the references to the collector." The Sudder Dewanny Adawlut, on the 9th June, 1814, returned for answer, that to authorize the practice followed by the judge, would be virtually to annul the rule, which must be complied with.

June 9, 1814.

No. 166.
1812.
Reg. V. Sec. 21.

Extract from a letter from the Register of the Nizamut Adawlut, to the Patna Court of Circuit, dated the 6th July, 1814.

No. 167.
1813.
Reg VI. Sec. 5, Clause 1.

PAR. 2. The Court understand the questions referred to them, at the request of the magistrate of Tirhoot, to be,

1st. Whether two judges of the court of circuit were competent, not only to annul the magistrate's order of the 30th September, 1813, but also to order him to proceed in the case to which that order related, in conformity with the first clause of Section 5, Regulation VI. 1813?

2dly. Whether in the cases provided for by the clause above mentioned the magistrate or other officers, before whom the proceedings on an actual or expected affray may have been held in the *foujdaree* court, is required to certify the case to the *dewanny* court, with a view to the inquiry directed in the latter court; or, whether it be at the discretion of the magistrate, or other *fouydaree* officer, to certify the case to the *dewanny* court, or not, as he may think proper?

PAR. 3. On the first point, the Court direct me to observe, that under the authority vested in two or more judges of a court of circuit, by Section 23, Regulation IX. 1807, "to pass such orders as they may deem proper and consistent with the regulations," the two judges of your court, who considered the case in question to be within the provisions of the first clause of Section 5, Regulation VI. 1813, were fully competent to order the magistrate to proceed in conformity thereto.

1807.
Reg IX. Sec 23.

1793. Reg. XLIX.

4. On the second point, supposing the case to be such as that intended to be provided for by the clause referred to, viz. a case of dispute concerning lands or other premises likely to terminate in a breach of the peace, if not adjusted, and in which neither of the parties may have complained to the *dewanny* court, under the provisions of Regulation XLIX. 1793, or any other regulation in force, relative to cases of dispossession, the Court are of opinion, that the magistrate or other officer presiding in the *foujdaree* court, is required to certify the case to the *dewanny* court, with a view to the issue of *perwannahs*, and summary inquiry provided for, in the civil court.

July 6, 1814.

No. 168. 1809. Reg. IX. Sec. 9.

On a reference from the commissioner of Chinsurah, through the Calcutta court of appeal, "whether a petitioner be entitled or not to receive the fees paid by him on instituting an appeal from the deputy commissioner to the commissioner of Chinsurah, previously to the enactment of Regulation IX. of 1809;" the Sudder Dewanny Adawlut, on the 13th July, returned for answer, that "understanding the appeal from the judgment of the deputy commissioner, which formed the subject of the reference, was depending before the commissioner prior to the promulgation of Regulation IX. 1809, and was transferred to the court of appeal for decision under the provisions of Section 9, of that regulation, in such case, as the provisions of Regulation IX. 1809, were extended by Section 9, to all depending appeals, and as under Section 8, the appeal in question was not liable to any institution fee, the court concur in the propriety of the order for refunding the amount paid by the appellant."

July 13, 1814.

No. 169. 1814 Reg. I.

In answer to a reference made by the judge of *zillah* Tirhoot, the Sudder Dewanny Adawlut, on the 20th July, 1814, stated it as their opinion, that as the stamp paper before given to the suitors whose indigence would not admit of their purchasing the same was no longer receivable under the provisions of Regulation I. 1814, on their returning the former, they should be furnished with the stampt paper prescribed by that regulation, provided they could assign sufficient cause for the delay.

July 20, 1814.

No. 170. 1814 Reg. I. Sec. 17.

In reply to a reference made by the judge of the city court at Patna, the Sudder Dewanny Adawlut, on the 20th July, 1814, stated it as their opinion, that whenever the plaint could not be written on one sheet of stampt paper, the remainder should be drawn up on paper prescribed for supplements in Section 17, Regulation I. 1814.

July 20, 1814.

No. 171. 1814 Reg. I. Sec. 19.

In answer, to a reference made by the Calcutta court of appeal, the Sudder Dewanny Adawlut, on the above date declared their opinion, that under the provisions of the section of the regulation in question, all copies of decrees or of other papers transcribed after the 1st May, (1814,) must be upon the stampt paper prescribed by Regulation I. 1814, notwithstanding that the decree or order may have been passed prior to the above date.

July 20, 1814.

Extract of a letter to the Commissioner at Moorshedabad, dated the 27th July, 1814. No. 172.

2. It appearing from the papers transmitted by you, that Gungaram has been duly served with a summons, and has failed to attend, as promised in his written acknowledgment of the receipt of the summons, the Court remark that for such failure he is liable, under the provisions of Section 6, Regulation IV. 1793, to personal arrest, and fine not exceeding five hundred Rupees. 1793 Reg IV. Sec 6. C. C. P. 1803 Reg III. Sec 7.

3. As the witness has evaded the warrant issued for the seizure of his person, the Court are of opinion, that it will be proper to issue a proclamation requiring his attendance within a certain period; and that if he should still neglect to attend within the time limited in the proclamation, you should impose such fine upon him as you may judge proper, not exceeding the amount above stated, and proceed to levy the same by attachment and sale of his property.

With regard to the witness Govind Sirkar, the Court remark, that as the summons has not been served upon him, in consequence, as stated in the return made by the *nazir*, of his having quitted his place of abode some time previous to the issue of the summons, the rules contained in the section above cited cannot be considered applicable.

July 27, 1814.

Extract from a letter to the Benares Court of Circuit, under date the 27th July, 1814. No. 173.

The Court of Nizamut Adawlut having reconsidered the general question, noticed in the 3d paragraph of my letter to you, under date the 16th September, 1813, I am directed to acquaint you, in qualification of the opinion therein expressed, that supposing a judge of circuit, holding a *zillah* or city jail delivery, and revising the proceedings of a magistrate respecting a prisoner ordered to find security for his future good behaviour, to pass a specific order, either confirming that of the magistrate, or limiting the amount or term of the security to be required from the prisoner; the Court are of opinion that another judge of the court of circuit, reviewing the proceedings on the case at a subsequent session, is not competent, under the regulations in force and the construction given to them by the circular order of the Nizamut Adawlut, under date the 8th August, 1807, to reduce the amount of the security fixed by order of the former judge, or in any respect to alter the substance and specific tenor of such order, except in the case expressly provided for by the Court's circular order of the 8th August, 1807, viz. under the provisions of Section 11, Regulation LIII. 1803, when a prisoner required to give security may have been in confinement for a year, and the judges of circuit, on the report of the magistrate, may concur with the latter in opinion, that the prisoner should be released on his *mochulka*, without security. 1803 Reg. LIII Sec. 11.

2. In other cases, wherein the order passed by one judge of a court of circuit, holding a *zillah* or city jail delivery, may appear to another judge to require alteration, the Court are of opinion, that a reference should be made to the Nizamut Adawlut, in pursuance of the regulations and the construction of them already communicated to you in the 2d paragraph of my letter, under date the 14th April last.

3. The Court are at the same time of opinion, that an obvious omission in the original order, in such case, which can be supplied without altering the substance of the order, (such as fixing the amount of the security when it has not been already fixed,) may be supplied by a judge of circuit holding a succeeding jail delivery, or by the court at large in cases brought before the court at the *sudder* station.*

July 27, 1814.

No. 174.

1797 Reg XI. Sec 2. C. C. P 1803 Reg XVIII. Section 3.

To the Moorshedabad Court of Appeal, 27th July, 1814.

GENTLEMEN,

The Court of Sudder Dewanny Adawlut, having had before them the papers submitted with your certificate, dated the 23d May last, remark, that the questions proposed for their consideration in the extract from your proceedings of the 10th of that month, are as follows :—

1st. Whether, under the statute 53, George III. chapter 155, it be necessary to require hereafter from British subjects, instituting a suit in the provincial court, the bond prescribed by Section 2, Regulation XI. 1797

2d. Whether, in the event of the requisition of such bond being still necessary, it should be written on stampt paper.

3d. Whether the bond exhibited by the plaintiff in the suit pending before you having been written in Calcutta upon plain paper, it be necessary to levy from the plaintiffs ten times the amount of the stamp duty, which would have been payable upon such bond, if it had been prepared upon paper bearing the prescribed stamp, previously to your admitting the said instrument to be filed in the cause.

PAR. 2. In answer to the 1st question, I am directed to transmit to you the enclosed extract of a letter from the Advocate General,† from which you will observe, that the provisions of the statute above mentioned do not preclude the necessity of requiring the bond prescribed in Section 2, Regulation XI. 1797.

3. With respect to the 2d question, the Court observe, that it has already been determined in the affirmative by their circular instructions, under date the 4th February, 1801.

4. Upon the remaining question, I am directed to acquaint you, that as the bond exhibited by the plaintiff in the suit appears to have been executed in Calcutta, and the regulations establishing a stamp duty do not extend to the town of Calcutta until they

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* The whole of the rules relative to prisoners detained *for security* have been *modified* by Regulation VIII 1818.

† *Extract of a letter from the Advocate General, dated 22d July,* 1814.

"In answer to your letter of the 13th instant, I have the honor to state, that as the 53 GEO III. Cap 155. Section 107, only gives jurisdiction over British subjects in the three cases therein mentioned, within none of which, unless the first, a demand for costs decreed against them in a *zillah* court can fall, I see no reason for departing from the security required from them when plaintiffs, by Section 2, Regulation XI of 1797, but that I do not think a British subject residing above ten miles from Calcutta should be called upon to execute the bond prescribed by Section 3, Regulation XXVIII, 1793, which should be therefore, repealed so far as it concerns that matter."

have received the sanction of the Court of Directors, with the approbation of the Board of Commissioners, as directed by the 98th Section of the statute in question, the Court are of opinion that the bond should be admitted in evidence in the suit, although on plain paper.

July 27, 1814.

Extract from a letter to the Benares Court of Appeal, dated 3d August, 1814. No. 175.

It appears to the Court to be within the spirit of Section 7, Regulation III. 1797, that an application for a review of a judgment, under a stated difference of opinion between your 1st and 2d judges, should be brought before another judge, when the question may be decided by a majority of voices; I am directed, therefore, to desire you will proceed accordingly.*

1797.
Reg III. Sec 7.
C. C. P 1803
Reg XV Sec. 7.

August 3, 1814.

The Court, for the information of the judge of *zillah* Burdwan, delivered it as their opinion, on the 2d of August, 1814, that as there was no specific provision in the regulations for compelling native officers of Government in the Judicial Department to deliver over charge of the records of their office, such cases fall within the general provision of Section 21, Regulation III. 1793. No. 176.

1793
Reg III Sec 21.
C C. P 1803.
Reg II. Sec. 17.

August 3, 1814.

Extract from a letter from the Calcutta Court of Appeal, dated the 28th March, 1814. No. 177.

"The point for the Court's determination is, whether the court of appeal can legally direct the enforcement of Section 11, Regulation II. 1806, at Chinsurah, when the debt exceeds 5000 Rupees."

1806
Reg. II. Sec. 11.

Extract from a letter to the Calcutta Court of Appeal, dated the 3d August, 1814.

"Upon the question submitted in your letter, I am directed to observe, that the jurisdiction of your court being restricted, under the provisions of Regulation IX. 1809, to cases wherein the amount or value adjudged or disallowed by the commissioner may be less than 5000 Rupees, the Court are of opinion, that the enforcement of Section 11, Regulation II. 1806, in cases exceeding the above amount, is not within your competency."

August 3, 1814.

In the 8th paragraph of a letter from the judge of Rajeshahye, dated 13th May, 1814, (submitted through the Moorshedabad court,) he requested instructions, "whether copies of papers made for records of court on delivery of the original papers to the parties, can be drawn out and authenticated on plain paper or not." The Court gave it as their opinion, on the 17th August, that the provisions of Section 19, Regulation I. 1814, appeared applicable only to copies of papers authenticated for individuals, and that it was not necessary that copies, merely for records of court, should be written upon stampt paper.† No. 178.

1814.
Reg. I. Sec. 19.

August 17, 1814.

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* But see the rules contained in Section 3, Regulation II. 1825.

† Superseded by Act III. Schedule B, Reg X 1829

No. 179.
1814
Reg 1. Sec 15.

In reply to a query put by the Dacca court of appeal in the 7th paragraph of their letter of 9th May, they were informed on the 17th August, "that the Court were of opinion, that the copies of decrees in regular suits, if filed with petitions of appeal, (whether the appeal be special or not,) must be considered liable to the rule contained in Section 15, Regulation I. 1814, but that if the copies of decrees be not filed, they will not fall under that rule."

August 17, 1814.

No. 180.
1814.
Reg 1.
Secs 13 and 14.

The judge of *zillah* Mirzapore, in the 4th paragraph of his letter, dated 25th May, requested to know, "in cases that were pending before the register and *sudder aumeens* previously to the 1st May, and which may be subsequently appealed to the judge, is the value of the property to be assumed, as directed by the first and second clauses of Section 14, Regulation I. 1814, or are these clauses to affect those persons only, who may file suits in the register's and *sudder aumeen's* courts, subsequently to the 1st May, and the appeal of former ones to be considered as a continuation of the original investigation?" The Sudder Dewanny Adawlut were of opinion, that the provisions of Sections 13 and 14, Regulation I. 1814, are applicable to all appeals preferred subsequent to the 1st May last, the date fixed for the operation of that regulation.

August 17, 1814.

No. 181.
1814.
Reg I Sec. 14.
Clause 4.

In consequence of doubts excited by the expression "under the existing rules," used in this clause the judge of *zillah* Jungle Mohauls, on the 1st August, requested instructions, whether the calculation of the fee receivable is to be made on the amount of the sum claimed, or on the value of the stampt paper for the plaint. He was informed in reply, that the Sudder Dewanny Adawlut understood the expression, "existing rules," to relate to the proportion of fees receivable by the register and native commissioners, on cases decided by them, or adjusted before them by the *razeenamah* of the parties; and were of opinion, that the amount receivable by the register and native commissioners, in such cases, should be calculated on the stampt duty actually paid in the cause, under Section 13, Regulation I. 1814.

August 17, 1814.

No. 182.
1814.
Reg I.
Sections 15 and 16.

On a reference from the judge of *zillah* Bundlecund, dated 13th May, (paragraph 2,) "whether parties may be allowed to bring their own witnesses without making any application to the court, or whether it is intended that an application on stampt paper shall be made for every witness, whether summoned by the court, or offered to be produced by the parties;" the Sudder Dewanny Adawlut, (adverting to the original object, declared in the preamble to Regulation VI. 1797, for the fee on summonses to witnesses, established by the first clause of Section 5, of that regulation, and the provisions of Sections 15 and 16, Regulation I. 1814, appearing to have been substituted for that clause,) gave it as their

opinion, on the 17th August, 1814, " that no witness could be examined in a regular suit without a *durkhaust*, as prescribed by Section 16 of Regulation I. 1814."

A similar construction given on the same date to a reference from the judge of Mirzapore, dated 25th May.

August 17, 1814.

No. 183.
1814
Reg I Secs. 15, 16, 17, 18 and 19.

On a reference from the judge of *zillah* Chittagong, dated the 21st May, (last paragraph,) the Court gave it as their opinion, on the 17th August, 1817, " that as the courts of the registers, *zillah* and city judges, provincial courts, and the Sudder Dewanny Adawlut only are specified in these sections, the provisions in them could not be considered applicable to the native commissioners."*

August 17, 1814.

No. 184.
1814.
Reg I. Sec 10

In reply to a reference from the judge of Cawnpore, dated 3d August, for sanction to order the copies of decrees to be written upon Culpee paper, the Sudder Dewanny Adawlut informed him, on the 17th August, 1817, " that as the regulations in force did not require the copies of decrees prepared for records of court to be drawn up on English paper, they (under the circumstances stated by the judge) were not aware of any objection to the using for that purpose Culpee paper."†

August 17, 1814.

No. 185.
1814.
Reg I Sec. 11. 1797
Reg VI Sec. 16. 1800.
Reg VII. Sec. 5. Cl. 1.

In reply to the 10th paragraph of letter from Dacca court of appeal, dated 9th May, the Court, on the 17th August, 1814, observed, " that the whole of Section 16, Regulation VI. 1797, had been rescinded by Section 2, Regulation VII. 1800, and that under the first clause of Section 5 of the latter regulation, marriage settlements *(kabeen namahs)* ought to have been executed on stampt paper; at all events, that they are obviously included in the provisions of Section 11, Regulation I. 1814."‡

August 17, 1814.

No. 186.
1793.
Reg XLVI.
1795
Reg XXIII.
1803
Reg XIV
1814
Reg. XXVIII.

In reply to the following query by the judge of city Patna, " Whether a plaintiff who has not instituted his suit as a pauper, may afterwards, in the course of it, be admitted to proceed as a pauper, on proof of his poverty;" the Court of Sudder Dewanny Adawlut, on the 31st August, 1814, acquainted him, " that as in the case supposed, the plaintiff must have already paid the institution fee, as well as given security for *vakeel's* fees, and costs of suit, the Court are of opinion, that he cannot be allowed to prosecute the suit *in formâ pauperis*; but that in the event of an appeal from the decision on the original suit, there would be no objection to his being admitted as a pauper on the appeal, on producing satisfactory proof of his poverty."§

August 31, 1814.

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* But see the subsequent rules contained in Regulation X. 1829, Schedule B.

† Superseded by Clause 2, Section 16, Regulation XXVI. 1814

‡ See Section 20, Regulation XXVI. 1814.

§ The Regulations first quoted in the margin have been rescinded by Section 2, Regulation XXXVIII. 1814, but the construction is equally applicable to the provisions of the latter Regulation.

No. 187.

1797. Reg. VI Sec 3. 1803. Reg XLIII. Section 3 1814 Reg. I. Sees 2, 13, 14, 15, 16 and 17.

Questions submitted to Government, on the 17th August, 1814, *and circulated for general information on the 7th September*, 1814.

"Whether Section 3, Regulation VI. 1797, and Section 3, Regulation XLIII. 1803, which are not rescinded, with the other sections of those regulations, by Section 2, Regulation I. 1814, are to be considered still in force, with respect to the institution fee to be paid on suits instituted before native commissioners, vested with the power of *moonsiff*, or whether the fee prescribed in the sections abovementioned was meant to be superseded by the rule for stampt paper, prescribed in Section 13, Regulation I. 1814, supposing such rule applicable to suits instituted before the *moonsiffs* ?"

2d. "Whether Sections 13, 14, 15, 16, and 17 of Regulation I. 1814, are meant to be restricted to regular suits and appeals, or to be extended to any, and what descriptions of summary suits ?"

3d. "What stampt paper is to be used under Section 11, Regulation I 1814, for deeds of contract, partnership, agreement, security or engagement, when the deed may not relate to any specific sum or value, so as to admit of the stampt paper being regulated by the table contained in that section."

In reply, the Court were informed on the 30th August, that "the Vice-President in Council was of opinion, that Section 3, Regulation VI. 1797, and Section 3, Regulation XLIII. 1803, should be considered to be in full force and effect for the present; but that in passing Regulation I. 1814, it was fully intended to substitute the stamp duty for the commission at present paid on suits instituted before native commissioners, which arrangement will accordingly be adopted the first convenient opportunity."*

The Court were also informed, that Sections 13, 14, 15, 16, and 17 of Regulation I. 1814, were only intended to apply to regular suits and appeals;† and that his Excellency in Council was not prepared to furnish the Sudder Dewanny Adawlut with any specific reply to the third object of their inquiries, but the question was in a course of discussion, and that a further communication would be made to the Court on the subject hereafter.‡

September 7, 1814.

No. 188.

1800. Reg VII Sec 7. 1814 Reg I. Sec. 18.

Extract from a Letter from the Register of the Sudder Dewanny Adawlut, to the Chief Secretary to Government, dated the 7th September, 1814.

"As Section 7, Regulation VII. 1809. whereby the judges [of the *zillah* and city courts] were directed to receive all applications of the collectors for the apprehension or confinement of defaulters, or on any other subject relating to the public revenue, upon common paper without a stamp, has been rescinded by Section 2, Regulation I. 1814, and

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* See Section 49, Regulation XXIII. of 1814.

† See Section 20, Regulation XXVI. 1814

‡ See Regulation X. 1829, Schedule A, § 3.

no similar provision is included in the latter regulation; the Court are of opinion, that all applications of the nature referred to, must be upon stampt paper, under the rule contained in Section 18, Regulation L 1814, until otherwise provided for by some new regulation."*

September 17, 1814.

No. 189.
1807.
Reg. IX. Sec. 17.

On a reference from the magistrate of *zillah* Rungpore, the Court informed him, on the 7th December, 1814, that police *darogahs* do not at present possess authority to compel the appearance before them of persons acquainted with the commission of offences: but that it is the Court's intention to submit to Government a regulation to invest the officers of police with such authority.

December 7, 1814.

No. 190.
1806.
Reg II Sec 5, Clauses 1 and 2.

Extract from a letter to the Dacca Court of Appeal, under date the 14th December, 1814.

The Court entirely concur with you in opinion, that in the case in question, it was clearly the duty of the judge of Mymensing, under clause first, Section 5, Regulation II. 1806, not to have proceeded to the attachment of the defendant's land till he had satisfied himself by proof that sufficient grounds, as set forth in the above mentioned clause, for requiring *malzamny* security from the defendant did actually exist; and until the defendant had failed to furnish such security within a reasonable time, to be allowed for that purpose.

2. The Court direct me further to observe, that the second clause of the section above referred to, on which Mr. Ewer appears to rest his opinion that it is discretionary with the judge to attach the land in dispute without adopting the previous measures above referred to, is merely subsidiary to the first, and explanatory of the mode in which attachments of land that may become necessary, under that clause, shall be made.

December 14, 1814.

No. 191.
1813.
Reg. VI. Sec. 5, Clause 1.
1805.
Reg II Sec. 13
1807
Reg. IX. Sec 20.

In reply to a reference made by the register and assistant to the magistrate of the Patna city court, through the judge and magistrate, the Court determined, on the 18th January, 1815, that a register was not competent, under the rule contained in the first clause of Section 5, Regulation VI. 1813, to proceed upon a case certified to the *dewanny* court by himself as assistant to the magistrate, without an order of reference from the judge, in conformity with Section 13, Regulation II. 1805. And that an assistant to a magistrate is not competent to pass an order of commitment, in cases wherein the offence may appear to require a more severe punishment than he is authorized to adjudge, but must submit his proceedings to the magistrate, under Section 20, Regulation IX. 1807.

January 18, 1815.

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* Superseded by Section 21, Regulation XXVI. 1814.

No. 192.
1809
Reg. VIII Sec 5. Cl 5

On the 18th January, 1815, the Court declared, "that the joint magistrate of Tirhoot, at Monghyr, was not authorized, under clause fifth, Section 5, Regulation VIII. 1809, in adjudging a *burkundauz*, from whose custody a prisoner escaped, to pay a fine equal to three months' salary," and directed restitution of whatever sum might have been levied exceeding the amount of salary for one month.

January 18, 1815.

No. 193.
1812
Reg III. Sec 6.

On the 18th January, 1815, the Court declared, that the 6th Section of Regulation III. 1812, was applicable only to *chowkeedars* or other description of village watchmen, and the magistrates not being empowered by the regulations before in force, to inflict corporal punishment, except in cases of theft, they judge it proper, in consideration of stripes inflicted by the magistrate of Tirhoot on a *burkundauz*, to remit the remainder of a sentence of imprisonment to which he had also been sentenced.*

January 18, 1815.

No. 194.
1814
Reg XXIV
Sec. 12, Clause 3d.

Extract from a letter to the acting Secretary to Government, in the Judicial Department, under date the 20th January, 1815.

4. In answer to the question contained in the 2d paragraph of your letter above acknowledged, I am directed by the Court to observe, that under the terms of the third clause of Section 12, Regulation XXIV. 1814, which provide only for "stationing the register or registers at any place or places within the jurisdiction of a *zillah* and city court of *dewanny adawlut*," the Court are of opinion, that the powers, ordinary and special, of the registers stationed at certain places within the jurisdiction of particular *zillah* or city courts of *dewanny adawlut*, must necessarily be restricted, as the regulation now stands, to the cognizance of civil suits which are cognizable, under the general regulations, by the *zillah* or city *dewanny adawlut*, within the jurisdiction of which they are respectively stationed.

January 20, 1815.

No. 195.
1807
Reg II.

Extract from the proceedings of the Court of Nizamut Adawlut, under date the 7th February, 1815, *on the trial of Boochnoo Sing and others, for forgery.*

The Court observe, on the subject of the last paragraph of the letter from the 3d judge of the Benares court of circuit, that although the offence of issuing forged deeds, is punishable by the Mohummudan law, it is not liable to the penalties for forgery prescribed by Regulation II. 1807.†

February 7, 1815.

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* But see Section 9, Regulation XIV. 1816.

† See Section 10, Regulation XVII. 1817.

Extract of a letter from the Judge of Zillah Nuddea, under date the 24th February, 1815.

No. 196. 1814. Reg XXIII. Sec. 13.

Query 1st. Whether in suits cognizable by the *moonsiffs*, the origin of the cause of action, in cases of bonds or other instruments, is to be reckoned from the actual date of the execution of such instrument, or from the date on which the payment has become due, as provided for and specified in the bond or other instrument, and the defendant has failed to discharge it, and to make good his engagement?

Query 2d. Whether the defendants having admitted the truth of the demand, by a written acknowledgment to that effect, can be construed to constitute a new ground of action, (cognizable by a *moonsiff*,) although the original cause of action is beyond the period of one year?

Extract of a letter to the Judge of Zillah Nuddea, in reply to the above, dated 1st March, 1815.

In reply to the first question submitted by you, I am desired to inform you, that it is the opinion of the Court, that in the case of a bond or other instrument for the payment of money, the cause of action cannot be considered to arise previous to the money becoming payable.

In answer to the second question referred by you, I am further directed to communicate to you the opinion of the Court, that a simple acknowledgment to the truth of the demand would not be sufficient to constitute a new ground of action, so as to bring within the cognizance of a *moonsiff* a suit, the prescribed period for instituting which had elapsed.

March 1, 1815.

Extract of a letter from the Judge of Zillah Nuddea, under date the 21st Feb. 1815.

No. 197. 1814 Reg. XXVII. Secs. 23 and 34.

2. Few instances occur in which a party appears and prefers his plaint in person, and consequently there is generally a necessity of appointing an authorized *vakeel* attached to the Judge's court to file the plaint, whatever may be the amount of the suit.—The *vakeel*, thus entertained, seldom performs any other act in the suit, except putting his name to the plaint, and for which he has generally received a fee of four Annas. If the suit has been referred to the register or a *sudder ameen*, a *vakeel* attached to their respective courts has afterwards been entertained, so that in all referred cases the plaintiff or appellant, if not himself present, has had to entertain two *vakeels*, one to present his petition of complaint, and the other to conduct the prosecution.

3. By Section 34, Regulation XXVII. 1814, *vakeels* are entitled to receive a fee of four Annas for presenting a miscellaneous petition or application, if it does not relate to any suit depending in court, wherein the person, in whose behalf they petition, is a party. This proviso, I imagine, must be presumed to have reference to the cases mentioned in the preceding paragraph, and the fee of four Annas, hitherto received for filing a plaint, does not appear to be compatible with the existing regulations. Moreover, by clause first,

Section 23, Regulation XXVII. of 1814, a *vakeel* is not competent to perform any act in a suit, until the party employing him has deposited in court the full and regular amount of his fees.

Extract of a letter to the Judge of Zillah Nuddea, in reply to the above, dated the 1st March, 1815.

2. If the plaintiff in a regular suit, instead of preferring his plaint in person, employ a *vakeel* to prefer it, he must deposit the full fee, in conformity with Section 23, Regulation XXVII. 1814.

3. In the event of the suit being referred to a register or *sudder ameen*, such deposit must be kept for the pleader employed to prosecute the suit in the court of the *sudder ameen* or register.

4. If such pleader be not the *vakeel* employed to file the plaint, the Court are of opinion, that under the provisions of Section 35 of the above regulation, the judge may award to the latter four Annas, or such fee as he may consider adequate, under the limitation prescribed in the section referred to; but it appears to the Court, that in general the fee of four Annas will in such cases be sufficient.

March 1, 1815.

No. 198.

1795. Reg. VI Sec 28. 1803 Reg XXVII. Sec. 23. 1808 Reg. XIII. Sec. 11.

Extract from a letter from the Benares Court of Appeal, under date the 28th Feb. 1815.

We request to be instructed by the Sudder Dewanny Adawlut, whether an appeal preferred to this Court, under Section 23, Regulation VI. 1795, or Section 23, Regulation XXVII. 1803, against a decision in the *zillah* court, decreeing the forfeiture of an estate to Government, for the offence specified in Section 22 of those regulations, is to be received as a regular appeal, upon payment of the stampt duty under Regulation I. 1814, and deposit of a pleader's full fee under Section 23, Regulation XXVII. 1814; or may be admitted as a summary appeal, upon the paper prescribed by Section 18, Regulation I. 1814, and on deposit of one-fourth of a pleader's full fee, as prescribed in Section 32, Regulation XXVII. 1814.

2. We further request to know, whether it is competent to the court of appeal to take security from the appellant to stay the execution of the *zillah* decree, under the discretion vested in it by Section 11 of Regulation XIII. 1808.

Extract of a letter to the Benares Court of Appeal, in reply to the above, dated the 8th March, 1815.

2. In reply to the first question submitted by you, the Court desire me to communicate their opinion, that an appeal preferred to your Court, under Section 23, Regulation VI. 1795, or the corresponding Section of Regulation XXVII. 1803, against a decision in the *zillah* court, decreeing the forfeiture of an estate to Government for the offence specified in Section 22 of those regulations, is to be received as a regular appeal under the general rules applicable to regular appeals.

3. In answer to your 2d Question, I am desired by the Court to inform you, that they are of opinion, that the provincial court is competent to stay the execution of the *zillah* decree, under the provisions of Section 11, Regulation XIII. 1808.

March 8, 1815.

No. 199.
1814
Reg. XXVII.
Sec. 23.

The Court informed the Bareilly Provincial Court, on the 29th March, 1815, that the amount to be deposited for Vakeels' fees, under Section 23, Regulation XXVII. 1814, instead of the security required by the regulations before in force, must be made in all cases of *vakalutnamahs*, filed subsequently to the 1st of February, 1815, in which security would have been demandable under the rules in force before that date.

March 29, 1815.

No. 200.
1793
Reg IX. Sec. 49.
1803
Reg. VII. Sec. 17.

At the second session of 1814 for *zillah* Ramghur, the senior judge of the Patna court of circuit reported a case in which the attendance of the prosecutor and principal witnesses could not be procured, they having returned to their homes in the Nawaub Vizier's territories some time before the sessions. He was informed in reply, that the case should again be brought on at the next sessions, when the prisoners should be acquitted, if the magistrate should still be unable to lay before the judge of circuit evidence sufficient for their conviction, although they might be held to security for their future behavior, previous to their release, if, on consideration of the proceedings held in the case, there should appear sufficient grounds to warrant that measure.

March 29, 1815.

No. 201.
1814
Reg XXVI.
Sec. 4.

Extract of a Letter to the Benares Court of Appeal, dated the 18th April, 1815.

"The Court concur with you in opinion, that as a general rule of practice, all applications for a review of judgment should be brought before the judge or judges, by whom the judgment may have been passed; excepting the case noticed by you of the final removal of such judge or judges from the court; or when material inconvenience may be likely to arise, from the long absence of the judge who has passed the decision from the *sudder* station."*

April 18, 1815.

No. 202.
1814
Reg I. Sec 17.
Reg XXVI.
Sec. 20

Letter from Benares Court of Appeal, dated the 12th April, 1815.

We refer the enclosed papers for the consideration of the Sudder Court respecting the proper construction of Section 17, Regulation I. 1814.

PAR. 2. The first is an order passed by the first and third judges, on the 1st of December, 1814, in enforcement of the section above cited.

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* Since made law by Regulation II. 1825.

3. The other is a petition from the pleaders of the court, in substance, that the petition for which a tax of four Rupees is to be paid, must mean a petition which shall contain arguments or other matter relative to the merits of the suit or appeal, and showing why it should be decreed or dismissed, and cannot be meant to extend to every little miscellaneous matter growing out of every case, an enumeration of many of which is subjoined.

4. With what is urged by the *vakeels*, the second judge entirely agrees. The tax, he conceives, was meant to check the former practice of going beyond the prescribed set of pleadings under the name of a petition, and was never meant to apply to collateral and miscellaneous matters, which, though they grow out of the case, have no immediate connection with its merits. Such petitions, he thinks, might be received on one Rupee paper, under the 18th Section, or even the object of them be moved verbally by the pleaders or parties without any petition at all. To present them on four Rupees paper must be felt as an intolerable expense and grievance.

Extract of a Letter to the Benares Court of Appeal, in reply to the above, dated the 26th April, 1815.

Considering Section 17, Regulation I. 1814, with the explanation of it contained in Section 20, Regulation XXVI. 1814, the Court are of opinion, that all petitions filed in original regular suits, or in appeals, regular or special, must be written on the stampt paper prescribed in the former.*

April 26, 1815.

No. 203.
1793
Reg V. Sec 21.

The Court decide that all suits instituted under Section 21, Regulation V. 1812, must be referred to the collector for report, provided he be on the spot. But that the reference is not necessary if the collector be absent from the *sudder* station, the object being to expedite the decision in such suits.

May 18, 1815.

No. 204.
1793
Reg. IX Sec. 16.
1797
Reg IV Sec 7, Clause 2
C C P 1803
Reg VI. Sec 16

Extract of a Letter to the Calcutta Court of Circuit, dated the 18th May, 1815.

The Court observe, that the rules originally prescribed in Section 16, Regulation IX. 1793, that all examinations and depositions are to be written in the language in which the deponents are most conversant, is superseded by the subsequent provision of clause 2, Section 7, Regulation IV. 1797.

This clause, to which Mr. Pattle seems not to have attended in issuing his original orders to the magistrate, and which, though expressly referred to by Mr. Gardiner in the 2d paragraph of his letter of the 18th ultimo, he appears from his letter to this Court still to overlook, prescribes that examinations before the courts of circuit and the *zillah* and city magistrates are to be taken down in the language and character in which the person examined may desire to have the same recorded.

The Court understand, that Mr. Gardiner affords to all persons examined before him the option directed to be given to parties and witnesses in the above clause, and that he also makes it a general rule, in the event of persons brought before him on criminal

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* Superseded by Acts 7 and 8, Schedule B, Reg X 1829.

charges confessing their guilt, to record such confessions in the language with which such persons are most conversant, and the Court are of opinion, that under the rule above cited, on persons examined before him not availing themselves of such option, the magistrate is clearly warranted in recording their examinations in the Persian language

This construction, the Court observe, appears to have been generally followed by all the courts of criminal judicature within the presidency, and, as far as they can judge from such of the proceedings held before Mr Pattle as have come to the notice of the Nizamut Adawlut, to have guided the practice of that gentleman himself, and the Court entertain great doubts, whether any general restriction on the practice of recording examinations of parties and witnesses in the Persian language, beyond those above noticed could be adopted without very seriously interrupting the despatch of public business

This inconvenience, the Court remark, appears, from the letters of the magistrate of the 24-Pergunnahs, to have resulted in a very serious degree from the orders of Mr Pattle, and the Court are of opinion that that gentleman was not warranted in issuing instructions of a general nature for the conduct of the magistrate, that power being expressly reserved to the Nizamut Adawlut, by Section 9, Regulation X 1796 The Court therefore desire, that Mr Pattle will avoid such procedure in future, and that he will address the Nizamut Adawlut whenever any of the magistrates within his jurisdiction may appear to require any general instructions for their guidance

1706
Reg X Sec 8
C C P 1803
Reg XXII
Sec 8

May 18, 1815

No 205

Extract of a letter to the Bareilly Court of Circuit, dated the 23th May, 1815

1814
Reg XXV
Secs 9 12 13 & 14

PAR 2 From these papers the Court observe, that Sobha Rai, on the 14th March 1815, preferred a petition to your senior judge, (when holding a sitting of the court of circuit at the *sudder* station, under the provisions of Section 12, Regulation XXV 1814,) against a sentence passed on him by the magistrate of *zillah* Cawnpore on the 25th November 1814, alleging that the magistrate had, in passing the said sentence, exceeded his legal competency, and praying that the proceedings might be sent for and the sentence annulled, but that your senior judge, deeming the sentence legal, rejected the petition

3 The Court are of opinion, that such decision of your senior judge was clearly final to its extent, under Sections 12 and 13, Regulation XXV 1814, and could be set aside only by this Court

4 In expressing this opinion however, the Court desire, not to be understood as determining that a court of circuit collectively, or a single judge exercising the powers vested in him by the sections cited, can never call for proceedings or information, which a former court has, on a particular occasion, refused to call for but merely that proceedings cannot be required in the same case, upon the same grounds and for the same purposes, which a former competent court may have already decided not to warrant the interposition of the court

5 Viewing the case submitted by you in this light, and understanding the grounds upon which your fourth judge deemed the requisition of the proceedings on the trial of Sobha Rai proper, to be the same which the senior judge had previously negatived, the Court must think the reference to your second judge of Sobha Rai's case irregular, and the order

proposed to be passed by your second and fourth judges, for bailing the said person and calling for the proceedings with a view to revise the sentence, invalid; and the Court accordingly annul the same.

6. The Court are further of opinion, that the reference made to your second judge, whilst absent on the circuit, was not warranted by any part of Sections 9 and 14, Regulation XXV. 1814; the question on which the sentiments of the second judge were required being evidently of a judicial nature.

1810 Reg IX Secs 38 and 39

7. On the general point of magistrate's competency to award the punishment which he is empowered to adjudge by Sections 38 and 39, Regulation IX. 1810, against the same person, on each separate conviction of repeated offences, the Court are of opinion, that in strictness a magistrate is so competent. But, as it appears to the Court that inconvenience may result from such powers, they propose to suggest a provision to Government for defining and limiting it in this and other cases of a similar description.*

May 25, 1815.

No. 206.

Extract from a letter to the Calcutta Court of Circuit, dated the 25th May, 1815.

1799 Reg II Sec 6 1807 Reg IX. Sec 19

PAR. 3. In the case of Gopaul, the Court direct me to observe upon the objections made by you to the legality of the sentence passed by the magistrate of the suburbs of Calcutta, that the rule contained in Section 6, Regulation II. 1799, which provides that guards, who may appear on the magistrate's inquiry to have been guilty of connivance or other criminality in the escape of prisoners, shall be committed for trial before the court of circuit, having been passed antecedently to the extension of the magistrate's powers by Section 19, Regulation IX. 1807, the Court are of opinion that if the magistrate, under the general powers vested in him by the latter regulation, should deem the punishment which he is thereby authorized to adjudge to be adequate to the offence, he is competent to dispose finally of the case, without commitment to the court of circuit.

May 25, 1815.

No. 207.

Extract of a Letter to the Bareilly Court of Appeal, dated the 1st June, 1815.

1814 Reg I Sec. 19. Reg. XXVI Sec. 16, C 3

PAR. 2. The Court observe, that when original documents which have been filed in court are delivered up to parties, the copies of such documents kept as records of court need not, under the explanation contained in clause third, Section 16, Regulation XXVI. 1814, be written upon stamp paper.†

1814 Reg I Secs. 11 and 18.

3. When authenticated copies of the legal documents specified in Section 11, Regulation I. 1814, are required as legal vouchers to be exhibited instead of the originals, the Court are of opinion, that the copies must be written on the same stamp paper as the originals, in conformity with Section 18, Regulation XXVI. 1814, whether prepared by a *cauzee* or *mooftee*, or by any other authorized person.

June 1, 1815.

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* Provided for by Regulation VI 1824

† But see Regulation X. 1829, Schedule B S. 3.

Letter to the Judge of City of Benares, dated the 1st June, 1815.

No. 208.
1810
Reg XIII
Sec 11, C. 1.

I am directed by the Court of Sudder Dewanny Adawlut, to acknowledge the receipt of a letter from you, dated the 17th ultimo, relative to a refund of the stamp duty, substituted for the institution fee, in cases decided in favour of the plaintiff on the acknowledgement of the defendant, without investigation of the merits.

2. The Court observe, that, in such cases, where the plaintiff's claim is not disputed by the defendant, it may generally be expected that the suit will be adjusted by *razeenamah*, in which case the provisions in force for the return of the institution fee, or the stamp duty substituted for it, in suits adjusted by *razeenamah* would of course be applicable.

3. But the Court are of opinion, that the existing regulations do not authorize a return of the institution fee, or of the stamp duty substituted for it, in the case stated by you, without a *razeenamah*.

June 1, 1815.

Letter to the Judge of Zillah Mymensing, dated the 1st June, 1815.

No. 209.
1814
Reg XXVII.
Sec 31.

I am directed by the Court of Sudder Dewanny Adawlut, to acknowledge the receipt of a letter from you, dated the 24th ultimo, relative to the payment of the fees of pleaders in a case decided in favour of the plaintiff, on the acknowledgement of the defendant without investigation of the merits, as well as without a *razeenamah* being filed, so as to bring it within the provisions of Section 31, Regulation XXVII. 1814.

2. The Court observe, that in such cases, the claim of the plaintiff not being disputed by the defendant, it may be generally expected, a *razeenamah* will be filed, when the second clause of Section 31, Regulation XXVII. 1814, would of course be applicable.

3. But if not, and the suit be allowed to proceed to a judgment in favour of the plaintiff, the Court are of opinion, that the *vakeels* are entitled to the full amount of the established fee: subject, of course, to the provisions of Regulation XXVIII. 1814, in suits of paupers.

June 1, 1815.

Letter to the Magistrate of Cawnpore, dated the 8th June, 1815.

No. 210.
1810
Reg XVI Sec 11.

I am directed by the Nizamut Adawlut, to acknowledge the receipt of a letter from you, dated the 8th ultimo, with its enclosures, relative to a difference of opinion between yourself and Mr. Middleton, the joint magistrate of Allahabad and Cawnpore, as to the competency of the latter to comply, of his own authority, with an application from the police *darogah* of Bindky for leave of absence.

2d. It not appearing from the papers transmitted by you, that the police establishment of the *thanah* in question, or of any other *thanah* within the limits of Mr. Middleton's jurisdiction as joint magistrate of your district, has been placed by order of Government under his immediate authority, in conformity with Section 11, Regulation XVI. 1810, the Court observe, that the whole of the native officers composing those establishments continue, as usual, under your control as magistrate of the district, and that consequently Mr. Middleton exceeded his competency in the instance referred to.

3d. You are desired to acquaint him accordingly.

June 8, 1815.

No. 211.

1814
Reg XXVI.
Sec 15, C. 5.

Letter to the Acting Judge of Zillah Allahabad, dated the 15th June, 1815.

I am directed by the Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 26th ultimo, with its enclosure from the register of your district stationed at Futtehpore, and in reply to acquaint you, for Mr. Middleton's information, that under the provision of clause fifth, Section 15, Regulation XXVI. 1814, and the general regulations in force, the Court are of opinion, that registers are fully competent, and required, to execute their own decrees under the same rules as are applicable to the execution of decrees by the *zillah* judge.

June 15, 1815.

No. 212.

1814
Reg XXIII.
Sec 49, C. 2.
Reg XXI.
Sec. 25, C. 1.

Letter from the Judge of Zillah Agra, dated the 27th May, 1815.

Clause second, Section 49, Regulation XXIII. 1814, prescribes, that the *moonsiffs* shall be entitled to receive the full value of the stampt paper on which the plaint may have been written, on every suit that may be adjusted before them by *razeenamah* ; and clause first, Section 25, Regulation XXVI. 1814, confirming the rule contained in Section 11, Regulation XIII. 1810, provides for the whole or part of it being paid to the party who, by filing the *razeenamah*, may have entitled himself to it.

It would appear from the above, that Government are to be twice charged with the value of the stampt paper in cases adjusted by *razeenamah*, but having doubts whether this interpretation of the rules above quoted be correct, I beg leave to solicit the instructions of the Court of Sudder Dewanny Adawlut on the point.

Letter to the Judge of Zillah Agra, in reply to the above, dated the 15th June, 1815.

I am directed by the Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you dated the 27th ultimo, and to acquaint you that your construction of the provisions therein cited appears to the Court to be perfectly correct.*

June 15, 1815.

No. 213.

1813
Reg VI. Sec 5.
Clause 3.

Extract of a letter to the Acting Judge of Zillah Tirhoot, dated the 30th June, 1815.

As no provision is made by clause third, Section 5, Regulation VI. 1813, for delegating to the collector the power of appointing a manager to disputed lands placed under attachment by order of the *zillah* court, such appointment, in the cases referred to in that section, can only take place from the *zillah* court.

June 30, 1815.

No. 214.

1814.
Reg XXVII.
Sec. 31.

Extract from a letter to Dacca Court of Appeal, dated the 6th July, 1815.

The provisions of Section 31, Regulation XXVII. 1814, must be deemed applicable to all suits, whenever instituted, which may be withdrawn or dismissed on default after the 1st February, 1815, the date fixed for the operation of the regulation.

July 6, 1815.

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* See No. 200, page 90.

Extract from a letter to the Magistrate of the Suburbs of Calcutta, dated the 6th July, 1815.

No. 215.
1813.
Reg. XIII Secs. 7 and 16.

PAR. 2. The instructions proposed by Mr. Barwell to be issued to the persons appointed under Section 7, Regulation XIII. 1813, not being warranted by that regulation, the Court do not consider it proper to sanction them.

3. The Court observe, that the nature and extent of the powers intended to be exercised by the persons nominated under the section above cited, together with the purposes of their appointment, are fully and particularly described in the *sunnud* which is directed to be granted to them by Section 16 of the regulation in question.

4. The Court are of opinion, that it will be sufficient to enforce a strict observance of the rules therein prescribed, and to restrain the persons to whom *sunnuds* may be granted from any acts not expressly authorized by the regulation.

July 6, 1815.

No. 216.
1814.
Reg. XXVI. Sec. 4, C. 2.

On the 27th July, 1815, the judge of *zillah* Gorruckpore was informed, in reply to an application for authority to review a decision of the register, "that the provisions of clause second, Section 4, Regulation XXVI. 1814, being restricted to cases decided by the provincial, *zillah*, and city courts, the Court of Sudder Dewanny Adawlut do not consider themselves authorized to comply with the application for a review in this case." The Court at the same time observed, "that an appeal from the register's decision to the *zillah* judge might of course be still admitted, under the provisions for such appeals, sufficient reason being assigned for the delay."

The terms of the clause referred to in the margin apply to "regular suits," but the Court decided that the spirit of the rule is also applicable to "summary suits," in letters to the acting judge of *zillah* Furruckabad, dated 15th March, 1816, and the register in charge of *zillah* Bundelkund, dated 20th April, 1818.

July 27, 1815.

Letter to the Moorshedabad Court of Circuit, dated the 27th July, 1815.

No. 217.
1811
Reg. I. Sec. 7.

I am directed by the Nizamut Adawlut, to acknowledge the receipt of a letter from your late fourth judge, under date the 20th ultimo, requesting the instructions of this Court, respecting the mode of proceeding against certain persons charged with knowingly receiving stolen property, the theft having been committed in Calcutta.

2. In reply to the questions submitted by Mr. Oswald, I am directed by the Court to inform you, that the offence of receiving stolen goods being under Section 7, Regulation I. 1811, not an accession to the theft, but a distinct offence, the person committing it may be brought to trial without the conviction of the thief; and that therefore, in the case in question, the record of the conviction of Korakoo is not essential to the proof against the receivers of the property stolen by him, if the fact of the theft, and the knowledge of the prisoners that the goods were stolen, can be established by other evidence.

3. The Court further observe, that on general principles, and as far as they are informed, under the provisions of the Mahommedan law of evidence, the record of the conviction of a person charged with theft is not conclusive proof against an alleged

receiver of stolen goods to prove the theft, if the latter desire to controvert the propriet of the conviction, and produce evidence to negative the fact of a theft having been committed.

4. In reference to the circumstances of the particular case stated by Mr. Oswald, the Court have desired me to add, that the receipt of *money* stolen, though the offence may be punishable under the Mahommedan law, does not appear to come within the provisions of Section 7, Regulation I. 1811, relative to persons guilty of receiving "stolen goods, cattle, jewels, or effects."

July 27, 1815.

No. 218.

1811 Reg. I Sec. 3, C. 3. 1814. Reg XI. Sec. 2, C. 4.

Letter from the third Judge of the Dacca Court of Circuit, dated 22d *July*, 1815.

I request you will obtain the opinion of the Nizamut Adawlut on the following point: Clause third, Section 3, Regulation I. 1811, specifies, "any person who may hereafter be convicted of the offence of breaking into any warehouse, storehouse, or other building, or place used for the custody and preservation of property, either by day or by night, with the intent to rob, shall be sentenced to imprisonment for the term of seven years, and to corporal punishment not exceeding twenty stripes of the *corah*." Clause fourth, Section 2, Regulation XI. 1814, states, "the sentence of imprisonment *in banishment* for seven years, and corporal punishment not exceeding twenty stripes of the *corah*, prescribed by clauses second and third of Section 3, Regulation I. 1811," &c.

2. The word *banishment* is not mentioned in the first quoted clause, section, and regulation, but it appears from the last quoted one, as if it was intended to form a part of the punishment on conviction of the offences specified in both; however, to prevent misconception, I request you will submit this letter for the opinion of the Nizamut Adawlut, whether a judge of circuit can pass a sentence of banishment, on conviction of the offence specified in clause third, Section 3, Regulation I. 1811, in addition to the 20 *corahs*, and seven years' imprisonment therein prescribed.

To the third Judge of the Dacca Court of Circuit, in reply to the above, dated the 2d *August*, 1815.

"I am directed by the Nizamut Adawlut to acknowledge the receipt of a letter from you, dated the 22d ultimo, submitting for the consideration of the Court, the question, whether the judge of circuit can pass a sentence of banishment on conviction of the offence specified in clause third, Section 3, Regulation I. 1811, in addition to the 20 *corahs* and seven years' imprisonment therein prescribed.

2. "In reply, I am directed to communicate to you the opinion of the Court, that as banishment does not form part of the punishment prescribed in the clause cited, it cannot be adjudged under that clause."*

August 2, 1815.

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* The third Clause of Section 2, Regulation XII. 1818, authorizes a court of circuit to sentence to banishment, on a conviction of burglary.

Letter from the Judge of the City of Benares, dated the 7th August, 1815. No. 219.

A difficulty has arisen from the operation of the several clauses of Section 13, Regulation XXIII. 1814. 1814 Reg XXIII. Sec 13. C. 1. 2, 3, and Sec 68.

2. By clause the first, suits cannot be received by persons invested with the powers of *moonsiff*, unless the cause of action shall have arisen within the period of one year previously to the institution of such suit. Clause the second prohibits these persons from hearing or determining suits in which themselves, their dependants, or an European, or an American may be party. And by clause the third, suits cannot be received or determined by them, which persons may desire to prefer *in formâ pauperis*.

3. The question, therefore, which arises, is, who is to hear and determine these suits. It can hardly have been intended that the time of the judge should be taken up by suits not exceeding in amount or value the sum of sixty-four Sicca Rupees; to impose upon the registers the suits referred to in clause the second would be a hardship; and if the suits described in clauses first and third are to be imposed upon the *sudder ameens*, it will make the situation of those officers worse than it was before.

4. It is quite clear that, under existing rules, these suits must be heard and determined somewhere. By the clause in question, the *moonsiffs* alone are prohibited from hearing them, and the rule allowing a period of twelve years for the institution of civil suits without exception, has not been rescinded.

5. The suits which persons invested with the powers of *moonsiffs* are thus prohibited from receiving will be numerous, and I beg to be informed in what manner the Court of Sudder Dewanny Adawlut understand they are to be disposed of.

P. S. The number of suits withdrawn from the *moonsiffs* under the second clause of Section 13, Regulation XXIII. 1814, that were instituted previously to the promulgation of that regulation, amount to eighty-four.

To the Judge of the City of Benares, in reply to the above, dated the 17th August, 1815.

I am directed by the Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 7th instant, requesting the Court's instructions regarding the trial of the suits referred to in the several clauses of Section 13, Regulation XXIII. 1814.

2. With respect to suits instituted *in formâ pauperis*, the *sudder ameens*, as well as the *moofussil* commissioners, being expressly restricted from taking cognizance of them, the Court observe, that such suits, as also the suits excepted from the jurisdiction of the *sudder ameens* by the latter part of Section 68, Regulation XXIII. 1814, can only be tried by the judge or register.

3. The other suits mentioned in your letter, as not cognizable by the *moonsiffs* under the first clause of Section 13, and the first part of clause second of that section, may be referred, at your discretion, either to the register or *sudder ameens*.

August 17, 1815.

Letter to the Judge of the City of Moorshedabad, dated the 31st August, 1815. No. 220.

I am directed by the Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 10th May last, requesting the Court's instructions on two 1799 Reg. VII Sec. 15.

points relative to the course of proceeding in summary suits, under the provisions of Regulation VII. 1799.

2d. The Court observe, that the summary inquiry authorized by Section 15 of the above mentioned regulation, being expressly restricted by the fourth clause to cases in which the under-tenant or his surety may be arrested and brought in to the *zillah* court, under the preceding clauses of the same section, the inquiry authorized cannot take place without the arrest of the under-tenant or his surety. But a reasonable time should be allowed to the plaintiff to point out the under-tenant or his surety, before the petition of arrest received under the second clause of Section 15, Regulation VII. 1799, is finally disposed of; and if there be no default of the plaintiff, it would, the Court think, be proper to extend the period originally granted, if the plaintiff desire it, with a view to save his right of summary action, under the first clause of Section 4, Regulation II. 180[redacted].

3d. On the second point noticed in your letter, the Court are of opinion, that the provisions of Section 15, Regulation VII. 1799, suppose the under-tenant, or his surety, at the time of a petition being preferred for their arrest, to be within the *zillah* or city jurisdiction in which the land, for which the arrear of rent is claimed, may be situated; as the summary inquiry provided for could not be regularly or conveniently made in a different jurisdiction, and the regulation contains no provision for arresting an under-tenant or surety in one *zillah* or city, in which he may be resident, and sending him to another in which the land is situated. It may be desirable to include a provision for this purpose in some future regulation, but in the mean time, the Court desire, that you will be guided by the construction above stated.*

August 31, 1815.

No. 221.
1812
Reg III. Sec 2.

Extract from a letter to the Mooshedabad Court of Circuit, dated the 8th September, 1815.

With reference to the 10th and 11th paragraphs of the magistrate's letter, the Court direct me to observe, that the rule contained in the first clause of Section 2, Regulation III. 1812, does not, in their opinion, require the subsistence money of witnesses to be lodged, until the prosecutor is desirous of taking out process to procure their attendance, and that the consequence noticed by the magistrate may be obviated by not summoning the witnesses, until the magistrate or his assistant be prepared to take up the case.

September 8, 1815.

No. 222.
1790
Reg X Sec. 2.

Extract from the proceedings of the Nizamut Adawlut, under date the 14th Sept. 1815.

The register, in conformity with the orders of the third Judge, lays before the Court a letter from the fourth judge of the Bareilly court of circuit, with the proceedings which accompanied it, on the commitment and trial of Sewah Singh on a charge of dacoity, wounding, and arson; No. 1, of the magistrate's calendar of *zillah* Bareilly for the month of July, 1815.

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* Provisions to meet these points were enacted by Section 16, Regulation VIII. 1819.

The third judge observes, that the prisoner in the trial before mentioned is not declared by the *futwa* of the law officer to be convicted on *Zuni Ghalib*, or strong presumption, and that the judge of circuit has not given, either in his letter, or in the proceedings on the trial, a clear and explicit opinion on the guilt or innocence of the prisoner, as required by Section 2, Regulation X. 1799.—The third judge proposes, therefore, that the proceedings on the commitment and trial be returned to the Bareilly court of circuit, with directions to the fourth judge of that court to re-consider the case, and to form his opinion, whether, under all the circumstances, the confession of the prisoner is worthy of belief, and therefore, sufficient for his conviction, or not. That if he should deem the prisoner duly convicted, he will, of course, refer the trial for the final sentence of this Court, stating his opinion explicitly on the prisoner's guilt. But if otherwise, it will be incumbent on him to pass final sentence of acquittal, and to issue his warrant to the magistrate for the discharge of the prisoner, holding the prisoner to security, if there appear to him sufficient grounds to warrant that measure.

The chief judge is of opinion, that the *futwa* of the officiating law officer of the court of circuit on the trial in question is too imperfect to admit of any definitive sentence being passed upon the case, and considers it necessary, therefore, for the ends of justice, that the proceedings should be referred in the ordinary course for the *futwa* of the law officers of this Court.

The papers being then referred to the second judge, he expresses his concurrence in the opinion recorded by the third judge.

Resolved, accordingly, in conformity with the opinion of the majority of the Court, that the proceedings on the commitment and trial of the prisoner be returned to the Bareilly court of circuit, with a letter from the register.

September 14, 1815.

No. 223.

1814.
Reg I. Secs 15, 16, 17.
Reg XXIII. Sec 75 C 8.
Reg XXIV Sec. 9, C. 4 and 6.

Extract from a letter from the Judge of Zillah Mymensing, dated the 20th September, 1815.

Do the provisions of Sections 15, 16, and 17, Regulation I. 1814, apply to the court of an additional register stationed in the *mofussil*, and invested with special powers under clauses fourth and sixth of Section 9, Regulation XXIV. of 1814, as well as to that of the ordinary register.

To the Judge of Zillah Mymensing, in reply to the above, dated 7th December, 1815.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 20th September last, and in reply to acquaint you, that referring to the rule contained in the sixth clause of Section 9, Regulation XXIV. 1814, the Court are of opinion, that a register, (at whatever place he may be stationed,) who is vested with the special powers provided for by that clause, or by the 4th clause of the same section, shall be guided in the trial of all causes of the nature therein mentioned by the rules in force for the trial of similar causes before the judge; that consequently the *durkhasts* for exhibits and witnesses, specified in Sections 15 and 16, Regulation I. 1814, and the pleadings and other papers mentioned in Section 17 of the same regulation which may

be filed in the causes in question, must be written on stampt paper of the value of 1 Rupee, instead of 8 Annas, the value prescribed for causes before registers vested with the ordinary power.

2. The Court are further of opinion, that the same construction of the third clause of Section 75, Regulation XXIII. 1814, is applicable to appeals from the decisions of *moonsiffs* which may be referred to *sudder ameens*, under the provisions of that section.

(N. B. Circulated on the same date for general information.)

December 7, 1815.

No. 224.
1801.
Reg. VI. Sec 32.

To the Judge of Zillah Midnapore, dated the 21st September, 1815.

I am directed by the Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 11th instant, and in reply to the question therein contained, to communicate to you the opinion of the Court, that suits instituted in conformity with Section 32, Regulation VI. 1801, [for the recovery of fines for the illicit manufacture, &c. of salt,] must be received and tried as regular suits, there being no provision for a summary process in such cases.*

The Court are also of opinion, that the plaint in the suits referred to should be drawn out on stampt paper, under the rule contained in Section 21, Regulation XXVI. 1814.

September 21, 1815.

No. 225.
1813
Reg. VI Sec. 3, C. 2.

On the 31st of October, 1815, the Court of Sudder Dewanny Adawlut determined, in reply to a reference from the judge of Bundelcund, that "applications made to the courts for the execution of awards by private arbitration, under the second clause of Section 3, Regulation VI. 1813, are to be received and enforced under the rules applicable to summary process, as directed in the said clause."

October 31, 1815.

No. 226.
1793
Reg. XXXVI.
Sec. 9
C. C. 1803.
Reg. XVII. Sec. 9

To the Acting Judge of Zillah Cawnpore, dated the 3d November, 1815.

I am directed by the Sudder Dewanny Adawlut to acknowledge the receipt of a letter from the judge, under date the 22d July last, with its enclosures, requesting the Court's construction of Section 9, Regulation XVII. 1803, relative to the forms to be observed in the registry of deeds.

The Court understand the intention of the section to be, that the person executing the deed, or his authorized representative (*mokhtar*), must attend to acknowledge the execution, and that one or more witnesses to the execution of the deed must also attend to prove the execution by their testimony on oath.

When the person executing the deed may depute a *mokhtar* with a *mokhtarnamah*, instead of attending himself, to acknowledge the deed, the execution of the *mokhtarnamah* should also be proved by the examination of two witnesses on oath.

But the Court do not consider it to be required by the regulation cited, that either the party executing the deed, or his *mokhtar*, should be examined on oath.

November 3, 1815.

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* This Regulation has been rescinded by Regulation X. 1819.

To the Benares Court of Appeal, dated 9th December, 1815. No. 227.

1808
Reg XIII.
Sec 3.

I am directed by the Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 13th ultimo, and to observe to you, in reply, that the provisions of Regulation XIII. 1808, have been modified by Regulation XXV. 1814; under Sections 3 and 5 of which all original regular suits in which the value or amount of the claim, calculated according to the provisions of Section 14, Regulation I. 1814, may exceed five thousand Sicca Rupees, are to be instituted and tried in the first instance in the provincial court.*

November 9, 1815.

Proceedings of the Court of Nizamut Adawlut, under date the 13th November, 1815, *on the trial of Allum for highway robbery, referred by the fourth Judge of the Bareilly Court of Circuit.* No. 228.

1803.
Reg LIII. Sec. 3,
C. 1.

The prosecutrix having deposed on oath, on the trial, that the prisoner snatched a silver *huslee* from her neck, and that, on her seizing him, he kicked her down, and ran away, but that he did not use any previous intimidation or force, or do her any personal injury; and witnesses who saw the prisoner, both immediately before and after the commission of the fact, having deposed that they did not observe any weapon or stick in his hand; the second judge is of opinion, that the offence of which the prisoner is guilty, is not that of robbery by open violence, as described in clause first, Section 3, Regulation LIII. 1803, but that the act constitutes the offence of forcibly taking a *huslee* from the prosecutrix's neck, without previous intimidation or personal injury or violence; and of a subsequent assault, for which he is only liable to corporal punishment and a short imprisonment. The case is referred for the opinion of another judge.

The fourth judge concurring with the judge of circuit and the *futwa* of the law officer of this court, that the prisoner is guilty of highway robbery, it is necessary to refer the case to another judge.

The chief judge concurring in the opinion expressed by the second judge, the following sentence is passed upon the prisoner.

The prisoner, Allum, has been convicted by the *futwa* of one of the law officers of this Court of highway robbery, and declared liable to discretionary punishment by *Acoobut*; the Court, however, not considering the offence of the prisoner to constitute robbery by open violence, as defined by clause first, Section 3, Regulation LIII. 1803, but amounting only to forcibly taking away the prosecutrix's *huslee* from her neck, without any previous intimidation, personal injury, or violence, and to a subsequent assault on her, sentence the said prisoner to receive fifteen stripes with the *corah*, and to imprisonment and hard labour for five years from this date.

See case of Mehtab, charged with highway robbery, convicted of snatching the property of the prosecutor, unattended with intimidation or personal injury, and sentenced, on the 9th April, 1814, to 30 *corahs* and 7 years' imprisonment.

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* This however has been superseded by Section 2, Regulation XIX. 1817.

See also the case of Lellah Gwallah charged with highway robbery, convicted of forcibly snatching a cloth from the person of the prosecutor, and sentenced, on the 8th October, 1814, to 15 *corahs* and 3 years' imprisonment.

November 13, 1815.

No. 229.
1810
Reg XVI.
Secs 10 and 18.

Extract from a letter from the fourth Judge of the Moorshedabad Court of Circuit, dated the 23rd November, 1815.

Not being aware of any regulation authorizing us to sanction the offer of a reward for the apprehension of a prisoner who may escape from his guard or from jail, we request the instructions of the Court of Nizamut Adawlut on this question as well as its sanction to comply with the request of the city magistrate.

Extract of a letter to the Moorshedabad Court of Circuit, in reply to the above, dated the 30th November, 1815.

Upon the question stated in the 2d paragraph of your fourth judge's letter, I am directed to observe, that although the rule contained in Section 16, Regulation XVI. 1810, does not expressly provide for the case of a convict escaping from custody, the Court are of opinion that, under the general tenor of the rule, and with reference to the further provision in Section 18, the courts of circuit are competent to authorize the offer of a reward to the extent therein specified in the cases referred to.

November 30, 1815.

No. 230.
1793
Reg XXIV.
1795
Reg XXXIV.
1803
Reg XXIV.

Extract of a letter to the Bareilly Court of Appeal, under date the 12th January, 1816.

2. "The Court direct me to observe to you, that as all claims upon Government to pensions are cognizable only by the collectors under the provisions of Regulation XXIV. 1803, subject to an appeal to the Board of Commissioners and the Governor General in Council, the case to which the above papers relate does not appear subject to the cognizance of your court."

January 12, 1816.

No. 231.
1793
Reg XIII
Sec. 9, C. 8
1803
Reg. XII Sec. 12,
C. 8.

The Court, on the 12th Jan. 1816, in reply to a reference from the Bareilly court of circuit, determined, that a person who had been punished for corruption or extortion on a criminal prosecution would not afterwards be liable to the fine provided by Section 12, Regulation XII. 1803, on a civil prosecution; though he would of course be subject to civil action for restitution of the money received by him.

January 12, 1816.

No. 232.
1810
Reg XVI. Sec. 11

To the Acting Magistrate of Zillah Cawnpore, dated the 24th January, 1816.

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of a letter from you, dated the 10th instant, and in reply to the questions therein contained, to communicate to you the opinion of the Court, that a magistrate must be considered to possess the power, under the regulations, of granting leave of absence to a police officer not placed by the orders of Government under the immediate control of a joint magistrate, without

previous reference to the latter. But with respect to the propriety of exercising such power, the Court observe that it must depend on the circumstances of each case. And with the view of obviating any inconvenience which might arise, they are of opinion, that the application in such cases should be submitted through the channel of the joint magistrate, to enable him, in forwarding it to the magistrate, to state any objections which he may have to offer against a compliance.

January 24, 1816.

A false deposition, upon oath, or under a solemn declaration taken instead of an oath, containing a deliberate and specific criminal charge, which the deponent knows to be unfounded, and which also appears to be malicious, is within the provisions for perjury contained in Regulation II. 1807; notwithstanding the provision for malicious, vexatious, and unfounded charges in Section 5, Regulation VII. 1811.

1807. Reg II. 1811. Reg. VII Sec. 5.

This was determined in the case of Punchum, on the 29th January, 1816, and in the case of Soogaitkhan, on the 25th April, 1817.

January 29, 1816.

Extract of a letter from the Judge of Zillah Rungpore, under date the 28th July, 1815.

No. 234.

4. The number of summary suits instituted annually since the year 1810 is exhibited in the margin. The increase is to be attributed to the operation of Regulation V. 1812, which seems to have been understood by the farmers and *zemindars* as authorising them to consider the *ryots*, on the expiration of their leases, as tenants at will, and has consequently led them to demand enhanced rents in most parts of the district. The provisions of Section 15 have also induced many, who had demands against their tenants on old engagements, to substitute summary prosecutions for the former mode of distraint

1812. Reg V. Secs. 9, 10, and 15. 1794 Reg. IV. Sec. 7.

5. By far the greater number of summary suits preferred last year were for arrears of rent due on *cahoolyuts*; but many of those that have lately been instituted are consequent to the more general operation of Section 10, Regulation V. 1812, and are preferred, either by the *ryots*, after releasing their property from distraint, or by the farmers or *zemindars*, to recover increased rents, on the grounds of having served their tenants with the notice described in the above section and regulation; the general principles of which, although it is professedly enacted for the guidance of persons purchasing lands sold for arrears of revenue, appear to be applicable to all cases where no written engagements exist; as the respective rights of the proprietors and the *ryots*, considered independently of their mutual agreements, cannot be supposed to be altered by the mere circumstance of the sale of the estate.

6. On first view of Section 10, Regulation V. 1812, it might be inferred that the *zemindars* or their representatives possess the power of exacting in the first instance by distraint or by a summary process, whatever amount they may have thought proper to insert in the notification required to be conveyed to their tenant, the latter having only the option of resigning his land, or continuing to hold it subject to pay the enhanced rent, until he can prove the injustice of the demand by a regular suit. Such an interpreta-

tion, however, does not seem to be easily reconcileable with that part of Section 7, Regulation IV. 1794, which, being declaratory of the rates at which the *ryots* were entitled to demand *pottahs*, and, of course, to continue in possession of their lands, cannot be considered as abrogated by Section 3, Regulation V. 1812, and I have hitherto deemed it necessary to require *zemindars* and farmers prosecuting summarily for enhanced rent, or defending suits instituted against them under Section 15, Regulation V. 1812, to show that the amount demanded in the notification served on their tenants was conformable to the *pergunnah* rates, and the actual extent of land.

7. Should this construction of the regulation be correct, (and I beg the favour of your informing me, should the Court consider it otherwise,) it is evident, that in the generality of suits denominated summary, it will now be necessary to adduce evidence to prove the *pergunnah* rates, the quality of the cultivator's land, and frequently the quantity thereof, all of those points being usually disputed, and even the last very frequently remaining doubtful until actually measured, in consequence of the fraudulent reduction made by the *zemindars* before the decennial settlement in the nominal extent of every farm or *jote* on their estates, for the purpose of imposing upon Government, and obtaining their lands in perpetuity on favorable terms.

Extract from the Proceedings of the Court of Sudder Dewanny Adawlut, under date the 3d February, 1816.

The Court entirely concur in the construction of Section 10, Regulation V, 1812, stated in the 6th paragraph of Mr. Scott's letter, dated the 28th July, 1815, and resolve, that he be informed accordingly. The Court observe, that the written notice, required by Section 9 of that regulation, when no written engagement may have been entered into, expressly refers to tenants subject to an enhancement of rent "under subsisting regulations," including, of course, the unrepealed provisions in Section 7, Regulation IV. 1794, relative to the renewal of *pottahs* at the established rates of the *pergunnah*.

February 3, 1816.

No. 235.

1793 Reg. IX Sec. 17. 1807 Reg IX Sec. 22. 1814. Reg. XXV Sec. 12.

To the Calcutta Court of Circuit, dated the 9th February, 1816.

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of a letter from you, dated the 22d November last, with the minutes and other papers which accompanied it, requesting the Court's construction of Section 17, Regulation IX. 1793, and Section 22, Regulation IX. 1807; also a further letter dated the 29th ultimo, with the two minutes of your third judge therein mentioned.

2. The Court entirely concur in the construction given by your third judge, Mr. Rees, to the provisions of Section 17, Regulation IX. 1793, and Section 22, Regulation IX. 1807.

3. The Court observe, that the last sentence in the former section includes all persons released or punished by the magistrates upon insufficient grounds; and that the modification of the original rule contained in Section 22, Regulation IX. 1807, expressly relates to the same description of persons, providing only for a further investigation when requisite, and for a reference of the case to the judges of the court of circuit collectively, instead of the Nizamut Adawlut.

4. The Court find nothing in the section last mentioned to support the opinion of your fourth judge, Mr. Watson, that the voice of the court collectively is required by Section 22, Regulation IX 1807, in those cases only where the summary proceedings before the magistrate appear to the judge at the session to be incomplete: and he considers it requisite for the ends of justice, to direct additional inquiry to be made by the magistrate, and the result to be communicated to the judges of the court of circuit collectively for their orders in the case.

5. On the contrary, the original rule in Section 17, Regulation IX, 1793, the modification of it in Section 22, Regulation IX. 1797, and the provisions of Section 12, Regulation XXV. 1814, appear to the Court to define clearly the powers of a single judge of a court of circuit, with respect to all persons punished or discharged by a magistrate, and included in calendars referred to in those sections, requiring, in all such cases, the concurrence of two judges of the court of circuit to reverse or alter the decision of the magistrate.

February 9, 1816.

To the Magistrate of Zillah Rajshahye, dated the 9th February, 1816.

No. 236.
1803. Reg LIII. Sec 2. Cl. 6. Sec. 7, Cl. 2.

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of your letter of the 27th ultimo, and with reference to the 4th and 5th paragraphs, to acquaint you, that in all cases wherein an order may have been passed either by the Nizamut Adawlut or court of circuit, directing the magistrate to hold a prisoner to security, to be approved by the court of circuit; you should fix the amount of security to be given by the prisoner in such sum as may appear to you just and proper, and report the same for the consideration and orders of that court.

February 9, 1816.

To the Joint Magistrate at Balasore, dated the 16th February, 1816.

No. 237.
1793 Reg. XIII. 1793 Reg. XII. 1803. Reg. XII.

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of a letter from you, dated the 9th instant; and in reply to the first question therein contained to communicate to you the opinion of the Court, that in cases when a magistrate may see grounds for a criminal prosecution against a native ministerial officer on a charge of bribery or extortion, it is not necessary that such prosecution should be deferred for a civil action, as provided for by Regulation XIII. 1793.

2. Upon the second question submitted by you, the Court are of opinion, that a magistrate is competent to pass final sentences of punishment on conviction of such offences to the extent of the powers vested in him by the regulations, when such punishment may appear to him, on a consideration of all the circumstances of the case, to be adequate to the degree of criminality of the accused. If otherwise, it would of course be necessary to commit the prisoner for trial before the court of circuit.

February 16, 1816.

To the Judge of Zillah Mymensing, dated the 16th February, 1816.

No. 238.
1814 Reg XXVI Sec. 15, Cl. 8.

I am directed by the Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you dated the 27th ultimo, requesting the opinion of the Court, whether the provisions

of clause eight, Section 15, Regulation XXVI. 1814, are intended to apply to decrees passed before the 1st February, 1815.

2. By the third clause of the Section above cited, it is declared, that decrees passed previously to the promulgation of Regulation XXVI. 1814, (viz. 1st February, 1815,) shall be executed according to the regulations before in force, and in the same manner as they had formerly been enforced.

3. The fourth clause of the same section empowers the several courts not to carry into execution any decree passed subsequently to the 1st February, 1815, except in conformity with the rules prescribed in the following clause of that section.

4. Under these provisions the Court are of opinion, that clause eighth is not expressly applicable to decrees passed antecedently to the 1st February. But if any doubt should arise on the propriety of executing a prior decree, it appears just and proper that notice should be given, and proceedings held in the manner directed by the clause in question.

February 16, 1816.

No. 239.

1814
Reg. XXIII. Secs. 73 and 45. Reg. XXVI. Sec. 15.

To the Acting Judge of Zillah Rajshahye, dated the 17th February, 1816.

I am directed by the Sudder Dewanny Adawlut to acknowledge the receipt of a letter from the late judge, dated the 10th instant, and to acquaint you, that a list of Errata in the Persian translation of several regulations of 1814, was published a short time since by the present translator of the regulations; including the inaccuracy pointed out by Mr. Shakespear in the translation of Section 73, Regulation XXIII. 1814, whereby Section 45 is erroneously made applicable to *sudder ameens*.

The Court at the same time direct me to observe, that the rules regarding the execution of decrees passed by *sudder ameens*, in common with the decrees of the judge and registers of the *zillah* and city courts, are contained in Section 15, Regulation XXVI. 1814, the 5th clause of which particularly mentions *sudder ameens*.

February 17, 1816.

No. 240.

1803
Reg XXXVII. Sec 3. Cl 7. Bengal. 1793 Reg XXXI. Sec. 3, Cl. 7.

To the Judge of Zillah Etawa, dated the 17th February, 1816.

I am directed by the Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you dated the 31st ultimo, relative to certain suits instituted by the commercial resident at Etawa, for the recovery of the penalty prescribed in clause seventh, Section 3, Regulation XXXVII. 1803, against persons failing in their engagement for the delivery of saltpetre, and requesting the Court's opinion, whether the provisions in the said clause and section are applicable to such engagements or not.

2. In reply, I am directed to state, that if saltpetre be an article of the Company's investment in *zillah* Etawa, the principles of the rules contained in Regulation XXXVII. 1803, are by Section 14 of that regulation declared applicable to manufacturers and other persons employed in the provision of it.

3. But whether the penalty prescribed in the clause cited, or the sixth clause of the same section, be recoverable in the suits referred to in your letter, the Court can give no opinion, without having the proceedings in such cases judicially before them.

February 17, 1816.

To the Acting Judge of Zillah Jungle Mahals, dated the 17th February, 1816.

No. 241.

1814
Reg XXVI.
Sec 8

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 18th ultimo, stating doubts on the construction of Section 8, Regulation XXVI. 1814.

2. The Court observe, that the 10th clause of the section above cited modifies the rules before in force, and directs that the respective periods limited by the regulations for the admission of appeals, in the cases therein referred to, shall be calculated from the date on which the decisions may have been passed, excluding from the calculation of such periods the interval which may have elapsed, in each instance, between the date on which the requisite stamp paper may have been furnished by the party to the court, and that on which the copy of the decree may have been tendered or delivered to the party in the open court in the mode prescribed by the regulations.

3. The Court, therefore, consider the rules contained in the section above cited to be applicable to appeals from all decisions passed subsequent to the 1st of February, 1815, the date fixed for the operation of the Regulation in question.

February 17, 1816.

To the Judge of Zillah Goruckpore, dated the 24th February, 1816.

No. 242.

1814.
Reg I. Secs 15, 16, and 17.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 13th instant, with its enclosure from your register, and to observe in reply, that Sections 16 and 17, Regulation I. 1814, cited by Mr. Smith, as well as Section 15 of that regulation, must be considered applicable to all suits tried by a register of whatever description, and on the decision of such suits the register is entitled only to a moiety of the institution fee, or of the amount of the stamp duty substituted for such institution fee by Regulation I. 1814, as expressly declared in the 2d Clause of Section 8, Regulation XXIV. 1814.*

February 24, 1816.

To the Judge of Zillah Jessore, dated the 15th March, 1816.

No. 243.

1814.
Reg I Secs. 15, 16, 17, 18 and 19.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 9th instant, and in reply to communicate to you the opinion of the Court, that in the suits noticed in your letter, viz. original suits referred for trial to the *sudder ameens*, it is not necessary that applications for the attendance of witnesses should be drawn out on stamp paper, under Section 16, Regulation I. 1814, the provision contained in that section, as well as in Sections 15, 17, 18, and 19, not being applicable to such suits.

March 15, 1816.

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* The fees of Registers were abolished by Regulation II. 1821.

No. 244.

1807 Reg 1X Sec. 19. 1809. Reg. VIII. Sec 5.

Extract of a Letter from the Acting Superintendent of Police, Western Provinces, under date the 18th January, 1816.

4. As repeated instances have of late occurred of the inferior officers of police deserting their posts in time of need, it appears extremely desirable that the specific penalties prescribed for this offence, whether proceeding from neglect or cowardice, should be fully defined, that the conditions attaching to the service may be clearly explained and understood. I request therefore to be favoured, for my information and guidance, with the construction of the Court, (founded, not upon the merits of this individual case, but upon the question generally,) whether, with reference to the opinion given by the law officer of the Bareilly court of circuit, as submitted with my letter of the 5th of June last, desertion, wilful neglect or disobedience on the part of a *burkundaz* or *suwar* entertained at the expense of Government for the purposes of police, is, or is not, punishable by the magistrates under the provision of Section 19, Regulation IX. 1807, and if not, I request to be favoured with the opinion of the Court regarding the extent of punishment to which an inferior police officer is liable under the regulations, on conviction of the species of misconduct above particularized.

To the Acting Superintendent of Police, Western Provinces, in reply to the above, dated the 15th March, 1816.

The Court of Nizamut Adawlut have again had before them, your letter of the 18th January last, and with reference to the 4th paragraph, desire me to communicate to you the following observations upon the questions therein contained.

By the fifth clause of Section 5, Regulation VIII. 1809, a specific provision is made for the punishment of neglect of duty by officers of police. The Court are of opinion, therefore, that in cases of this description the magistrate is restricted to the limitation of punishment therein defined; but that, if any distinct misdemeanor beyond neglect of duty should be established, the case would, of course, fall within the magistrate's discretion, under the general powers vested in him, by Section 19, Regulation IX. 1807.

March 15, 1816.

Memorandum of constructions of Regulations determined by the Court of Sudder Dewanny Adawlut in the English Department, on the 15th March, 1816, *ordered to be translated for the information of the vakeels.*

No. 245.

1814 Reg XXIV Sec. 6, C. 7

1. The rule contained in this clause is applicable to all decrees passed by the *zillah* and city judges since the 1st February, 1815, on appeals from the decisions of their registers, whether the suits may have been referred to the register before or after the above date.

1814. Reg XXV. Sec 5.

2. Under the provisions of this section, which are construed to modify all former rules in force for regular appeals to the Sudder Dewanny Adawlut, the regular appeals

to this Court, (viz. not being special or summary appeals,) are restricted to regular civil suits tried and determined in the first instance by the provincial courts. In suits, therefore, which may have been originally tried in the *zillah* or city courts, and subsequently in appeal by the provincial courts, if the decision of the latter have been passed subsequently to the 1st February, 1815, whatever may be the amount adjudged or disallowed by the decree of the provincial court, a second regular appeal is not open to the Sudder Dewanny Adawlut. This Court can admit a special appeal only in such cases, under the provisions of Section 2, Regulation XXVI. 1814, with an exemption of paupers from the use of the stamp paper required by the third clause of that section; provided they shall appear entitled to appear as paupers, under the provisions of Regulation XXVIII. 1814.

3. Should the Court of Sudder Dewanny Adawlut reject a special appeal in any such case, which from the amount or value may be appealable to the King in Council, the appellant may appeal to His Majesty in Council under the rules which have been established for such appeals, and a translation of the whole of the proceedings held in the *zillah* or city, and provincial courts, will be transmitted to England, with a view to enable the King in Council to form a judgment on the merits of the case.

4. Under the provisions in the two clauses referred to, [in the margin,] the Court are of opinion, that the only second or special appeals now admissible by the Sudder Dewanny Adawlut in regular suits, or those specifically mentioned in the third clause of Section 5, Regulation XXV. 1814, (or in the terms of the Regulations,) "from the judgments passed "by provincial courts on regular appeals admitted by them, from original decisions of "*zillah* and city judges, and assistant judges, or from the original decisions of registers "passed under the provisions of clause sixth, Section 9, Regulation XXIV. 1814;" viz. in regular suits originally tried and decided by the *zillah* or city judges, or assistant judges, or by registers specially empowered under the sixth clause of Section 9, Regulation XXIV. 1814, and subsequently heard and determined in appeal by the provincial courts: consequently that judgments of the provincial courts passed after the 1st February, 1815, upon second appeals to those courts, in suits originally tried by the registers, and afterwards in appeal by the judges of the *zillah* or city courts, are final.

1814. Reg XXV Sec 5, C 3 Reg XXVI. Sec. 2, C 6

5. The Court understand the intention of this clause to be, that all judgments upon second appeals to the provincial courts, which might be passed by those courts, after the 1st February, 1815, should be final, whether the appeal have been admitted by the provincial court before or after that date.

1814 Reg. XXVI. Sec. 2, C. 6

March 15, 1816.

Letter from the fourth Judge of Calcutta Court of Appeal, dated the 24th April, 1816.

No. 246.

1814. Reg XXVI. Sec. 2, C. 1

We beg to be favoured with the opinion of the Court of Sudder Dewanny Adawlut, whether a special appeal may be admitted under clause 1, Section 2, Regulation XXVI. 1814, to reverse an error in the determination of facts, where the judgment is manifestly without, or contrary to, evidence; or where exorbitant damages have been given; or

whether a special appeal lies exclusively on matter of law, practice, and usage, &c. arising on the face of the decree, and not requiring evidence to substantiate or support it.

Letter to the Calcutta Court of Appeal in reply to the above, dated the 1st May, 1816.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from your fourth judge, dated the 24th ultimo, requesting the Court's construction of clause 1, Section 2, Regulation XXVI. 1814, regarding the admission of special appeals.

2. Upon the first question proposed by your fourth judge, viz. whether a special appeal may be admitted to reverse an error in the determination of facts, when the judgment may appear to be manifestly without, or contrary to, evidence, the Court are of opinion, that a special appeal cannot be admitted on such grounds under Section 2, Regulation XXVI. 1814; which requires that all the facts of the case must be assumed as stated in the decree.

3. Upon the second point, viz. when exorbitant damages may appear to have been given, the Court can offer no opinion without more particular information of the case, and the damages awarded, such as might enable them to judge, whether the case is within any of the special grounds stated in the first clause of Section 2, Regulation XXVI. 1814. The Court, therefore, can only suggest, that you should exercise your own judgment on the case, in determining whether it falls within any of the prescribed grounds for the admission of special appeals or otherwise.

May 1, 1816.

No. 247.

1814 Reg. I. Sec 18. 1816. Reg. IV. Sec. 2.

To the Acting Magistrate of Zillah Allahabad, dated the 1st May, 1816.

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of your letter of the 22d ultimo, with its enclosure from Mr. Middleton, joint magistrate at Futtehpore.

2. Upon the first question contained in Mr. Middleton's letter, the Court are of opinion, that all miscellaneous petitions or applications which may be preferred to a magistrate must be considered within the provisions of Section 18, Regulation I. 1814, excepting such as are presented by persons exempted therefrom by Section 19, Regulation XXVIII. 1814, and Section 2, Regulation IV. 1816.

3. The Court are further of opinion, that only such petitions on unstampt paper, which are allowed by the Regulations, should be filed on record.

4. With respect to the question proposed in the last paragraph of Mr. Middleton's letter, regarding the perusal of petitions on unstampt paper, the Court are of opinion, that the magistrates must exercise their discretion in particular cases where sufficient reason may appear for the petition not having been presented on stampt paper, as required by Section 18, Regulation I. 1814. But that, as a general rule, petitions required to be presented on stampt paper should not be read, unless so presented.

May 1, 1816.

To the Dacca Court of Appeal, dated the 6th May, 1816. No. 248.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 27th ultimo, and to acquaint you, that supposing the omission therein noticed, (viz. to state *distinctly*, as required by the third clause of Section 2, Regulation XXVI. 1814, the specific ground, or grounds, under the first clause of that Section, on which a special appeal is solicited,) in the petitions for special appeals not yet disposed of, to have proceeded from inadvertence, the Court are of opinion the appellants should be allowed to supply it by a supplementary petition, drawn out on the paper prescribed in Section 17, Regulation I. 1814.

1814 Reg. XXVI. Sec. 2, C. 3.

May 8, 1816.

To the Judge of Zillah Rajshahye, dated the 15th May, 1816. No. 249.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 10th instant, and in reply to refer you to the first clause of Section 20, Regulation XXVI. 1814, whereby the provisions of Section 16, Regulation I. 1814, regarding applications for summoning witnesses, is expressly restricted to original regular suits, and to appeals regular or special, and declared not applicable to summary suits.

1814 Reg. XXVI. Sec. 20, C. 1.

May 15, 1816.

Letter from the Judge of Bundlecund, dated the 6th May,'1816. No. 250.

In Clause 4, Section 32 of Regulation XXVIII. of 1803, it is stated, respecting summary suits for arrears of rent, that the judge "may refer the case to the collector of the district for adjustment and report, when neither the judge nor his register may be able, from other avocations, to try and determine it without delay, and where the case may not be cognizable by the native commissioners acting under them."

1814 Reg. XXIII.

2. I take the liberty of soliciting the sentiments of the Court, whether it is to be inferred from the latter words of the above quotation, that the native commissioners and *sudder ameens* are competent to receive and try summary suits for arrears of rent, if under 64 Rupees, under the rules established for the receipt, trial, and execution of summary suits.

To the Judge of Zillah Bundlecund, in reply to the above, dated the 22d May, 1816.

I am directed by the Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 6th instant, and in reply to communicate to you the opinion of the Court, that summary suits are not cognizable by *sudder ameens* or *moonsiffs*, under the provisions of Regulation XXIII. 1814, or any other regulation at present in force.

May 22, 1816.

To the Judge of Zillah Nuddea, dated the 29th May, 1816. No. 251.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 16th instant, and to acquaint you, that under the general powers vested in registers to the *zillah* and city courts by Regulation XXIV. 1814, in suits referred to them under that regulation, the Court are of opinion, that they are

1814 Reg XXIV. Secs. 8 to 12.

competent to proceed against persons charged with resistance to the process issued by them in such suits, in the same manner as the *zillah* and city judges are empowered to proceed in similar cases, subject to a summary appeal from the decisions passed by them to the judge of the *zillah* or city court.

2. The Court at the same time observe, that under the powers reserved to the judges of the *zillah* and city courts, by Section 10, Regulation XXIV. 1814, they may, at all times, recal from their registers the suits referred to them wherein a resistance of process may have taken place, including, of course, any depending investigation of the stated resistance.

May 29, 1816.

No. 252.

1818.

Reg. X. Sec. 22.

From the Judge and Magistrate of Zillah Cuttack, dated the 30th May, 1816.

The acting collector of this district having petitioned the Court to commit a witness for perjury, who is stated to have given, on oath, a false deposition before him in a case under investigation by him, in conformity to the rules contained in Section 22, Regulation X. 1813; it becomes necessary to ascertain, whether a collector is authorized by Regulation X. 1813, to examine witnesses on oath without having previously obtained the authority of the judge; for should it appear that the oath administered is illegal, I conceive no prosecution will hold good against this witness.

By Section 13, Regulation VIII. 1794, a collector must be authorized by the judge to examine witnesses on oath, in cases referred to him for investigation, prior to his administering the oath; Section 22, Regulation X. of 1813, is silent as to the mode in which the examinations are to be made; and I am not aware that any other regulation directs collectors to examine witnesses on oath, excepting in cases pending before them which may regard the conduct of any of their native officers.

You will oblige me, therefore, by obtaining for me the opinion of the Courts of Sudder Dewanny and Nizamut Adawlut, whether a collector, by the existing regulations, is authorized, either in the investigation of cases referred to him for report by the judge, or of cases pending before him in conformity to the rules contained in Section 22, Regulation X. 1813, to examine witnesses on oath; or whether it is not necessary that the collector should obtain the sanction of the judge for his administering the oaths to witnesses in the investigation of such cases.

To the Judge and Magistrate of Zillah Cuttack, in reply to the above, dated the 5th June, 1816.

I am directed by the Sudder Dewanny and Nizamut Adawlut to acknowledge the receipt of a letter from you, dated the 30th ultimo, and to acquaint you, that under the provisions of Section 22, Regulation X. 1813, which suppose a charge or information upon oath, and direct that the investigation shall be conducted by the collector or other public officer intrusted with the charge of the *abkaree mohaul*, the Court are of opinion, that such officer is empowered to administer an oath, in cases within the provisions referred to.

June 5, 1816.

No. 253.

From the Judge of Zillah Allahabad, dated the 2d July, 1816.

1803 Reg. XXI Bengal, 1793. Reg XVI. 1813. Reg. VI.

I request you will obtain for me the orders of the superior Court, on the following points; 1st. Can a regular suit respecting the proprietary right to land, in which the amount of suit is more than 200 Rupees, be referred by the court to arbitration, under Section 3, and clause 2 of Section 2, Regulation VI. 1813, which direct that the rules of Regulation XXI. 1803, should be held applicable to such references? 2ndly. Can a regular suit, in which the amount may be 200 Rupees, or less, respecting the property of land, be referred by the Court to arbitration, under the provision of Section 3, Regulation VI. 1813, provided the parties make application for that purpose?

To the Judge of Zillah Allahabad, in reply to the above, dated the 17th July, 1816.

I am directed by the Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 2d instant, and to acquaint you, in reply, that the terms of Section 2, Regulation VI. 1813, appearing to be clear and express upon the subject of the questions referred for the consideration, the Court, previously to returning any distinct answers to them, desire you will state what grounds of doubt have occurred to occasion the reference.

From the Judge of Zillah Allahabad, in reply to the above, dated the 26th July, 1816.

I have the honor to acknowledge the receipt of your letter, under date the 17th instant.

It having been the practice of this Court, in the time of my predecessors, to refer to arbitration suits respecting the property in land, &c. whatever might be the amount, and it appearing to me that the limitation of the amount of suits to the sum of 200 Rupees was a fundamental rule of Regulation XXI. 1803, and therefore applicable by clause 2, Section 2, Regulation VI. 1813, to all suits referred to arbitration under the provisions of that section, I was induced to make the reference contained in my letter of the 2d instant, that I might be guided by the orders of the superior Court in the determination of several suits now pending in this court, which had been referred to arbitration, although the amount of them exceeded the sum of 200 Rupees.

To the Judge of Zillah Allahabad, in reply to the above, dated the 7th August, 1816.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 26th ultimo.

The Court observe that Section 3. Regulation XXI. 1803, relates to the appointment of a single arbitratort in suits not exceeding 200 Rupees. But Section 2 applies expressly to suits exceeding that amount.

The provisions of this regulation being extended generally to suits respecting property in land or limited tenures therein by Regulation VI. 1813, the Court are of opinion, that under Section 2 of the latter regulation, all suits of this description may be referred to arbitration for whatever amount.

August 7, 1816.

No. 254.

1800 Reg. V. Secs. 14 and 17.

From the second Judge of the Benares Court of Appeal, dated the 15th July, 1816.

I submit a copy of a proceeding of the judge of the city of Benares, dated the 14th ultimo, and of a proceeding of this court, dated the 10th instant.

2. It is certain, as urged by Mr. Bird, that Section 24, Regulation XLIX. 1803, the first clause of which was cited in the acting register's letter of the 29th of August, 1811, as authorizing a special appeal in summary suits for revenue, is rescinded *in toto* by the second section of Regulation XXIV. 1814; but I confidently trust, the Sudder Dewanny Adawlut will see ground for deciding that the provisions of Regulation XXVI. 1814, for the admission of special appeals, are not exclusive of summary suits of the description abovementioned; as, considering the hasty and superficial inquiry upon which these decisions are usually passed, I think it would be highly mischievous and unjust to leave the defendants of these suits in all cases without any remedy, but that which is pointed out in Section 17, Regulation V. 1800, and Section 35, Regulation XXVIII. 1803.

To the Benares Provincial Court, in reply to the above, dated the 31st July, 1816.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from your second judge, dated the 15th instant, with its enclosures.

2. Upon the general question therein referred, the Court are of opinion, that if the summary judgment passed by the city judge, be within his competency under the provisions of Section 14, Regulation V. 1800, an appeal to the provincial court, whether regular or special, is precluded by Section 17 of that regulation.

3. But if it should appear upon the face of the summary judgment, that the city judge has exceeded his legal competency, a summary special appeal would lie to the provincial court, in conformity with established usage, and the reason and necessity of the case, (although not expressly provided for by any regulation,) with a view to correct the irregularity without the expense and delay of a regular suit.

July 31, 1816.

No. 255.

1812 Reg. V Sec. 15.

From the Judge of Zillah Rungpore, dated the 11th August, 1816.

I beg to be informed, whether, in the opinion of the Sudder Dewanny Adawlut, the provisions of Section 15, Regulation V. 1812, can be considered as applicable to cases in which the *zemindars* and their representatives attach the *jotes* of their tenants, or oust them at the end of the year for disputed arrears of rent, accruing on notices served on the cultivators in the manner described in Sections 9 and 10 of the above regulation.

2. I make this reference in consequence of frequent applications being made to me by the *ryots*, for injunctions upon farmers and others to refrain from ousting them from their *jotes*, the petitioners being ready to pay the amount of such part of the demand against them as they admit to be legal into court, and to give security, and contest the justice of the remaining part of it, in the manner provided for in Section 15, Regulation V. of 1812.

To the Judge of Zillah Rungpore, in reply to the above, dated the 21st August, 1816.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 11th instant, requesting the opinion of the Court, whether

the provisions of Section 15, Regulation V. 1812, can be considered applicable to cases, in which a landholder may attach the *jote* of his tenant, or oust him at the end of the year for a disputed arrear of rent.

2. In reply, I am directed to state, that although the provisions of the section cited apply directly to the case only of an attachment of property for an alleged arrear of rent, the spirit and equity of the rule must, in the judgment of the Court, be considered applicable to the case put by you, supposing the requisite conditions, as specified in the section above mentioned, to be performed by the tenant for bringing the question of rent in dispute to a speedy determination in the civil court.

August 21, 1816.

Extract from a letter to the second Judge of the Bareilly Court of Circuit, under date the 21st August, 1816.

No. 256.
1803
Reg VII. Sec 17. Bengal, 1793.
Reg. IX. Sec. 49.

4. With respect to the general mode of procedure to be observed by a court of circuit, when neither prosecutor nor witnesses may attend during the session, the Court are of opinion that, in pursuance of the spirit and intention of Section 17, Regulation VII. 1803, the trial should be postponed in the first instance to the next circuit, with instructions to the magistrate to adopt every practicable measure for causing the attendance of the prosecutor and witnesses; after which, if no sufficient reason appear for again postponing the trial, it should be brought on, and the prisoner discharged, with or without security, as may appear proper in consideration of the magistrate's proceedings on the commitment.

August 21, 1816.

To the Judge of Zillah Beerbhoom, dated the 4th September, 1816.

No. 257.
1812.
1794.
Reg IV. S 5.
Reg V. S. 9 and 10.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 29th ultimo, and to observe in reply, that Regulation V. 1812, contains no provisions for a summary suit to compel *ryots* to take *pottahs* and give *cabooleats*; but that landholders may proceed in conformity with Section 5, Regulation IV. 1794, and Sections 9 and 10, Regulation V. 1812.

September 4, 1816.

To the Calcutta Court of Circuit, dated the 23rd September, 1816.

No. 258.
1816.
Reg. XVII. Sec. 7, C. 2.

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of a letter from your officiating judge, dated the 16th instant, and in reply to communicate to you the opinion of the Court, that the native doctors attached to the *zillah* and city jails must be considered to fall within the general description of subordinate officers of the criminal jails, mentioned in the 2d clause of Section 7, Regulation XVII. 1816.

September 23, 1816.

No. 259.
1807.
Reg. IX Sec. 19.

Extract of a letter to the Calcutta Court of Circuit, dated the 31st October, 1816.

9. The Court think it necessary to notice the remarks communicated for the guidance of the magistrate of Nuddea, in the 14th paragraph addressed to him by your fourth judge on closing the session of the district.

10. These remarks are concluded in the following terms: "It is almost always "desirable, that though a special power is given to the magistrate to convict, without trial, "of cattle stealing, still the trial should not be dispensed with, unless on very strong "special grounds. Where such grounds do not exist, the court of circuit will of course "quash the magistrate's conviction, and direct a trial in the ordinary course."

11. But the Court of Nizamut Adawlut cannot admit that a conviction upon a trial before the magistrate, on the result of which he is expressly authorized by Section 19, Regulation IX. 1807, to pass sentence of punishment to the extent specified in that section, is liable, on the grounds stated by Mr. Watson, (viz. as not being "a regular trial before a judge, aided by his law officer,") to be impeached as "a conviction without trial."

12. Nor, under the construction of the regulations in force which was communicated in the 10th paragraph of a letter addressed to you, by order of the Nizamut Adawlut, on the 16th February last, (viz. "that under the authority vested in the magistrates by Section "19, Regulation IX. 1807, they must be left to the exercise of their discretion in disposing "finally of all cases of theft, which may not appear to them to require a more severe punish- "ment than they are empowered to inflict under that section,") would it, in the judgment of the Nizamut Adawlut, be competent to a court of circuit, to quash a sentence of conviction and punishment, passed by a magistrate under the discretion vested in him by the section referred to, merely on the ground of his having tried a case of theft, which, in the opinion of a court of circuit, should have been brought before that court, although it would be the duty of a judge of circuit, in pursuance of Section 63, Regulation IX 1793, to report the magistrate's conduct to the Nizamut Adawlut, if it should appear that he had been guilty of any serious and wilful misconduct in the exercise of the powers intrusted to him, or in cases of mere error of judgment, to point out the same to him for his future guidance.*

October 31, 1816.

No. 260.
1814.
Reg XXIII.
Sec 49, C. 2.

To the Judge of Zillah Chittagong, dated the 26th December, 1816.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from the acting judge, dated the 19th August last, and to acquaint you, that under the second clause of Section 49, Regulation XXIII. 1814, (extended to the *sudder ameens* by Section 73 of that regulation,) the native commissioners are entitled to the full amount of stamp duty paid on the institution of the suit, in all cases adjusted before them by *razeenamahs*.

2. This point was determined by the Court, on the 15th June, 1815, in answer to a similar reference from the judge of Agra.†

December 26, 1816.

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* Sentences, however, passed by the magistrates under Regulation XII. 1818, are repeatedly quashed, under Section 6 of that regulation; and the Court's Circular Order, dated the 16th of April, 1819.

† See No 212, page 68.

To the Benares Provincial Court, dated the 26th December, 1816.

No. 261.

1814
Reg I. Sec. 18.
Reg. XXVIII.
Secs. 7 and 8.

In compliance with the request contained in your second judge's letter of the 17th instant, the questions therein stated, relative to the right of a pauper to file a *vakalutnamah* upon plain instead of stampt paper of the prescribed value, has been submitted to the consideration of the Court of Sudder Dewanny Adawlut; and I am now directed to communicate to you the opinion of the Court collectively, that in all cases when a pleador may be appointed by a party, the *vakalutnamah* must be drawn out on stampt paper; *vakalutnamahs* not being included in Section 8, Regulation XXVIII. 1814, which specifies the stamp duties from which paupers are exempted.

2. In the cases specially provided for by the second clause of Section 7 of the regulation in question, viz. where the pleader may have been appointed by the court, no *vakalutnamah* is of course necessary. But the Court do not consider this clause applicable to any case in which a *vakeel* is appointed by a party.

December 26, 1816.

Extract from a letter to the Bareilly Provincial Court, under date the 26th December, 1816.

No. 262.

1810.
Reg XIII.
sec. 4, C. 3.

2. Under the powers vested in single judges of the provincial courts by the third clause of Section 4, Regulation XIII. 1810, to determine on the admission or rejection of applications for special appeals to those courts, the order of a single judge, holding a regular sitting of the court, for the admission of a special appeal, must, in the judgment of the Sudder Dewanny Adawlut, be deemed conclusive, in like manner as if it had been passed by two or more judges of the provincial court.

3. This point has been already determined by the Court, under date the 31st July last, on a reference from the second judge of the Dacca provincial court.

4. With regard to the mode of proceeding adopted by your senior judge in the two cases noticed in the present reference, I am directed to observe, that as the opinion of the senior judge, on the competency of the court, at large to revise the grounds on which the special appeal had been admitted by a single judge, differed from that of the third judge, the question should have been brought before the fourth judge, (the second judge not being at the *sudder* station,) in conformity with the provisions of Section 9, Regulation XXV. 1814.

1814.
Reg. XXV. Sec. 9.

December 26, 1816.

From the Patna Court of Appeal, dated the 8th January, 1817.

No. 263.

1806.
Reg XVII. Sec. 8.

Doubts have been entertained of the meaning of Section 8, Regulation XVII. of 1806, and it has been construed different ways, which has occasioned contradictory decisions. We therefore request to be favored with the opinion of the Sudder Dewanny Adawlut, whether the period of one year, allowed for the redemption of a mortgage or conditional sale, is to be calculated from the date of the *perwannah* issued to the mortgager or seller; or from the day of his being served with the *perwannah*. If the latter, it is possible

that the mortgager or seller may be absent, or may withdraw himself to prevent his being served with the *perwannah*, and the regulation in question makes no provision for this: it therefore would be desirable that the Sudder Dewanny Adawlut should also point out the course which is to be pursued in such a case.

To the Patna Provincial Court, in reply to the above, dated the 23d January, 1817.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 8th instant, and in reply to communicate to you the opinion of the Court, that the period of one year, allowed for the redemption of mortgages or conditional sales by Section 8, Regulation XVIII. 1806, must be calculated from the *date* of the written notification, as expressly mentioned in that section, as well as in the Persian translation thereof.

January 23, 1817.

No. 264.

1816 Reg XV. Sec. 10, C. 2.

To the several Provincial, Zillah and City Courts, dated the 29th January, 1817.

A question having arisen, whether the provisions contained in Regulation XV. 1816, were intended to include officers and soldiers belonging to native invalid corps, the Court of Sudder Dewanny Adawlut deemed it proper to ascertain the sentiments of Government upon the point, as being immediately connected with the military department; and it being possible, that the native invalids attached to invalid battalions, [who are understood to be employed as guards and sentries,] might be considered in that department as coming within the description (in Section 10) of "native officers or soldiers entertained in regular "corps, and on the actual strength of the army on the establishment of the presidency at "Fort William."

2. You will receive herewith, for your information and guidance, an extract (paragraph 2), of a letter from the Secretary to Government in the judicial department, dated the 17th instant. together with extract of a letter from the acting adjutant general, from which you will observe, that the native invalid battalions are considered within the description above mentioned, and consequently entitled to benefit of the regulation in question.

January 29, 1817.*

No. 265.

1799 Reg. VII. Sec. 15.

To the Calcutta Provincial Court, dated the 19th February, 1817.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from your first, second, and officiating judges, dated the 3d instant, with the papers accompanying it, relative to the summary suit—Obeychurn Bonerjia and others, plaintiffs, *versus* Ramkanye Badooreg and others, defendants.

2. With regard to the general question referred in the second paragraph of your letter, viz. "whether in a suit instituted under the provisions of Regulation VII. 1799, the judge is warranted in deputing an *ameen*, for the purpose of local investigation;" the Court are of opinion, that although such deputation should not be ordered in summary suits without necessity, the *zillah* judge is not restricted by any provision in Regulation VII. 1799,

* For another Construction of this date, see No. 300, page 120.

from directing a local inquiry, when it may appear to him indispensably requisite for the purpose of ascertaining the rent demandable in the case

3. In the present instance, it is stated by the defendants, and does not appear to be denied by the plaintiffs, that the *cabooleat* of the former stipulates for the payment of rent according to an actual measurement of the lands, and the *zillah* judge considered it necessary, in consequence, to depute an *ameen* for the purpose of making a measurement and *jummabundy* of the lands, limiting his commission to fifteen days.

4. Without going into a consideration of the merits of the case, the Court have no hesitation in stating their opinion, that the *zillah* judge was, under the above circumstances, competent to order the deputation of an *ameen*, and the plaintiffs having in consequence declined to proceed on the summary suit, the judge was of course at liberty to dismiss it, subject to the institution of a regular suit

5. You are desired to transmit a copy of this letter for the information of the judge of *zillah* Nuddea, and are, at the same time, authorized to revise the orders passed by your second and fourth judges, on the 18th December, 1816.* Revision of summary decisions

February 19, 1817.

To the Calcutta Provincial Court, dated the 19th February, 1817. No. 266

1793 Reg XLIX. 1803 Reg. XXXII.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from your first, second, and officiating judges, dated the 3d instant, with the paper accompanying it, relative to a question referred at the request of judge of *zillah* Nuddea, viz whether in a summary suit instituted on the 14th March, 1816, under Regulation XLIX. 1793, and struck off the file on the 27th of that month, in consequence of the non-attendance of the plaintiff, the *zillah* judge was competent to receive the suit on the 10th April following, (being satisfied with the reasons assigned by the plaintiff for his non-attendance,) and to proceed upon it under the provisions of the regulation above mentioned.

2. This appears to the Court, from the letters and proceedings of the judge of *zillah* Nuddea, to be a more accurate statement of the question referred by Mr Paton, than that which is given in the 2d paragraph of your letter, viz. "whether he is competent to revive a summary suit, which he has once determined, and to pass a second decree," which might be understood to mean the revival of a suit already determined on its merits.

3. With regard to suits dismissed on account of non-attendance and neglect by the plaintiff, the Court observe, that no particular rule has been established for summary suits; but that, with respect to regular suits dismissed under Section 10, Regulation IV 1793, the *zillah* and city courts were informed by a circular notice from the Sudder Dewanny Adawlut, under date the 22d August, 1795, that the plaintiffs in causes dismissed under this rule have the option of reinstating them under the regulations.

4. Applying the principle of this construction to summary suits, and considering that no fee is payable on the institution of such suits, that the suit was originally struck off the file without calling on the plaintiff to show cause for not having attended and proceeded in

* The orders of the 16th Dec 1816 reversed the decision of the *zillah* judge, and directed him to re-admit the suit, and decide it in a summary manner without deputing an *ameen*

the suit; that little delay occurred in the plaintiff's subsequent attendance; and that the reasons stated by him for his previous non-attendance appeared satisfactory, the Court are of opinion that the judge of *zillah* Nuddea was fully competent to revive and proceed upon the summary suit referred to in the papers accompanying your letter; viz. that of Chedam Poraee, and others, plaintiffs, *versus* Huneef Biswas, defendant.

Revision of summary decisions.

5. You are accordingly desired to transmit a copy of this letter to the judge of *zillah* Nuddea for his information, and are, at the same time, authorized to revise the orders passed by your second and fourth judges on the 18th December, 1816.

February 19, 1817.

No. 267.

1803. Reg. XXXVII. Sec. 3, C. 5 Bengal, 1793. Reg. XXXI. Sec. 3, C. 5.

From the Judge of Zillah Etawah, dated the 11th February, 1817.

I have the honor to submit for such order as the Court of Sudder Dewanny Adawlut may be pleased to pass thereon, a copy of a petition presented to this court by the *vakeel* of Government, at the suggestion of the commercial resident at Etawah, requesting to be informed in what mode *tulubanah* on warrants issued in conformity with clause 5, Section. 3, Regulation XXXVII. of 1803, is recoverable.

To the Judge of Zillah Etawah, in reply to the above, dated the 26th February, 1817.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter dated the 11th instant, with its enclosure; and in reply, to inform you, that if the peons employed under the fifth clause of Section 3, Regulation XXXVII. 1803, be not in the receipt of a salary from Government, the Court consider any *tulubanah* payable to them to be recoverable from the person failing in his engagement, whether for the delivery of saltpetre, or any other article of the Company's investment.

2. The Court are further of opinion, that if the amount of such *tulubanah* be not paid on demand, it may be debited to the defaulter by the commercial resident, and deducted from any sum due to him.

3. The Court at the same time observe, that the regulations do not contain any special provision for enforcing payment against the defaulter in such cases, and that consequently recourse must be had, when necessary, to the general means of recovery by a suit in the civil court.

February 26, 1817.

No. 268.

1814. Reg XXIV Secs 9 and 12

To the Secretary to Government in the Judicial Department, dated the 5th March, 1817.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter, dated the 21st ultimo, with its enclosure, rélative to the competency of registers, vested with special powers under Sections 9 and 12, Regulation XXIV. 1814, to refer summary suits for adjustment to the collectors.

2. The Court are of opinion, that the provisions in the existing regulations, which authorize a reference of civil suits, regular or summary, to the collectors for adjustment; (viz. Section 13, Regulation VIII. 1794; clause fourth, Section 15, Regulation VII. 1799;

clause fourth, Section 14, Regulation V 1800, clause fourth Section 32, Regulation XXVIII 1803, Section 13, Regulation II 1805 Section 21 Regulation V 1812, and Section 2, Regulation VII 1813,) were meant to be exercised by the judges of the *zillah* and city courts, but not by the registers of those courts.

3. In support of this construction, the Court observe, that several of the regulations adverted to require the judge to refer the suit to the collector for adjustment, in cases only wherein neither themselves nor their registers may be able to try and determine the same without delay. And with regard to summary suits, it is provided in Section 13, Regulation II 1805, that "all summary inquiries and processes are to be conducted, as far "as practicable, by the judges in person, with the assistance of the collectors in adjusting "accounts of arrears of rent between proprietors and farmers of land and their under-"tenants, as expressly authorized by Section 15, Regulation VII 1799, and Section "32, Regulation XXVII 1803" It is added, that "whenever, from the urgency of other "depending causes and business before the *zillah* and city judges, they may not be able to "make the summary inquiries above noticed, with the expedition requisite in such cases, they "are authorized to refer the same to their registers, to proceed thereupon according to the "regulations viz as the Court understand the rule, to try the merits of the case, not to refer it to the collector, which the judge might have done if such reference had been intended

4. Under the seventh clause of Section 12, Regulation XXIV 1814, registers stationed at a place not being the station of the *zillah* or city *dewanny adawlut*, may be invested with original jurisdiction, within local defined limits, "for the cognizance and trial "of summary suits.' But it is provided in the next clause, that "in receiving and trying "such summary suits, the register shall possess the same authority, and shall proceed in "the same manner as if the case had been referred to him by the *zillah* or city judge"

5. The Court, therefore, do not consider the register competent to refer to the collector any original summary suits instituted under the section above mentioned, but are of opinion that he should try the same himself, if cognizable by him, whether within the description of suits referrible to the collector, under Section 21, Regulation V 1812, or otherwise, that rule being so far modified by the subsequent provisions in clauses seventh and eighth of Section 12, Regulation XXIV 1814

March 5, 1817

To the Dacca Provincial Court, dated the 26th March, 1817

No 269
1814
Reg XXIII
Sec 64.

1. I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from your register, dated the 19th instant, with its enclosure from the judge of *zillah* Mymoopsingh, recommending the appointment of Mr Stephens, the civil surgeon of that station, to the office of *sudder ameen*

2. Under the express terms of Section 64, Regulation XXIII 1814, that "in the "future nomination of individuals for the office of *sudder ameen*, the *zillah* judges are not "restricted to persons of any particular class or religious persuasion, but are required

" carefully to select such individuals as may be best qualified for the trust;" the Court are of opinion that all individuals duly qualified for the trust, are eligible to the office of *sudder ameen*, and under the testimony given by you and by the *zillah* judge to the qualifications of Mr. Stephens, the Court are not aware of any objection to the proposed appointment.

March 26, 1817.

No. 270.

1803 Reg III Sec 7 Reg VIII. Sec 25. Bengal, 1793 Reg. IV Sec 6

To the Judge of Zillah Agra, dated the 26th March, 1817.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 11th instant, requesting their instructions, regarding the power of the civil courts "to enforce the production of a *muhajun's* books, which are necessary in cases before them."

2. The Court are of opinion, that in all cases wherein it may be necessary to call upon a witness to produce documents of the nature referred to, which are known, or presumed on strong and sufficient grounds, to be in his possession, if the witness refuse or neglect to produce the documents required from him, and fail to assign satisfactory cause for not producing the same, he is liable to be proceeded against in conformity with the spirit of the rules for compelling witnesses to give their testimony, contained in Section 7, Regulation III. and Section 25, Regulation VIII. 1803.

3. If, therefore, you have just reason to be satisfied that the witness, in the case which forms the subject of your letter, possesses documents material to the elucidation of the merits of the cause, the Court are of opinion, that you will be warranted in proceeding against him in conformity with the provisions above cited, viz. by imposing a fine not exceeding 500 rupees, and detaining him in custody until he shall consent to produce the documents required.

March 26, 1817.

No. 271.

1803 Reg. XXXV. Sec 16

To the Bareilly Court of Circuit, dated the 26th March, 1817.

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of a letter from your fourth judge, dated the 7th instant, in reply to the letter addressed to you under their orders of the 12th ultimo.

2. The several magistrates being vested with a concurrent jurisdiction by Section 16, Regulation XXXV. 1803, in the cases therein provided for, the Court of Nizamut Adawlut are clearly of opinion, that a magistrate, in whose jurisdiction a person may be apprehended on a criminal charge, is competent to take cognizance of the charge, and to commit for trial before the court of circuit, although the crime may have been perpetrated in another jurisdiction, if he should think it advisable to do so, in preference to sending the prisoner to the magistrate of the district in which the offence was committed.

3. It may, the Court admit, be in general more convenient to prosecutors and witnesses, that the cases should be tried in the district where the crime has been committed. But in the present instance, the Court conclude, that the prosecutor and witnesses were in

attendance at Cawnpore, in which case there does not appear to have been any sufficient reason why the trial should not have been proceeded upon by Mr. Elliott at the session of that district.*

March 26, 1817.

From the Benares Provincial Court, dated the 27th March, 1817.

No. 272.

1808
Reg. XIII Sec. 12.
1814.
Reg XXIII
Sec. 40, C 5.

By Section 12, Regulation XIII. 1808, and the rules therein alluded to, in appeals from decrees for money or other movable property, the appellant has a right to stay the execution of the decree, by giving good and sufficient security.

2. That Section is no where rescinded; yet in Clause 5, Section 46, Regulation XXIII. 1814, the word "empowered" being used, the judges seem to be of opinion that in appeals from the *moonsiffs*, even in cases of money or other movable property, they have a discretion to reject security tendered by the appellant, and to direct the execution of the decree appealed from.

3. Against orders to this effect petitions have been presented to this court, and as the unrescinded Section of Regulation XIII. 1808, appears to us to cast some doubt upon the intent of the clause cited from Regulation XXIII. 1814, we request to be furnished with the Sudder Dewanny Adawlut's instructions upon the point.

To the Benares Provincial Court, in reply to the above, dated the 9th April, 1817.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from your senior and late second judges, dated the 27th ultimo, and to acquaint you in reply, that the Court do not understand the word "empowered," used in the 5th clause of Section 46, Regulation XXIII. 1814, as intended to modify the general rule prescribed by Section 12, Regulation XIII. 1808, which is still in force.†

April 9, 1817.

From the Judge of City Benares, dated the 12th May, 1817.

No. 273.

1814
Reg XXIV.
Sec. 6, C. 2.
1796
Reg. X. Sec. 2.

I beg leave to submit the accompanying papers for the consideration and orders of the Court of Sudder Dewanny Adawlut.

Copy of a petition from Hurbunslol, Brijruttun Dos, and Luchmun Dos, with the orders annexed.

Copy of the proceedings of the additional register, Mr. S. M. Duntze, dated the 8th instant.

2. The petitioners are defendants in a civil suit referred for trial to the additional register, and that officer having refused to receive their answer to the plaint, I recalled the suit, and at the same time requested him to name the regulation, under which he considered himself authorized to proceed to try it *ex parte*, notwithstanding the appearance of the defendants.

3. My competence to make this request Mr. Duntze has thought proper to question, and assuming to himself an authority with which he thinks I am not invested, he has

* But see the rules relative to Venue, contained in Regulation VIII. 1822.

† See No. 384, page 106.

proceeded to call upon me to name the regulation that authorizes me to call upon him to name one Of this authority no doubt, I imagine, will be entertained by the superior Court At all events, if there is no such authority in me, there certainly can be none in Mr Duntze, and it is not a little curious, that while questioning the competence of his official superior to exercise it, he should nevertheless be fully satisfied that he is competent to exercise it himself

4 Should the Court concur with me in opinion upon this point, I beg that the necessary orders may be issued for Mr Duntze s information and guidance

To the Judge of the City of Benares in reply to the above, dated the 21st May, 1817

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 12th instant, with its enclosures.

2 Upon the question stated by your register, I am directed to acquaint you for his information, that as all decisions and orders of the register of a *zillah* or city court are appealable to the judge, the Court are of opinion, that the latter is fully competent to call upon the register for an explanation of any order passed by him, which may appear to the judge in opposition to, or unwarranted by the regulations in force

3 The Court are further of opinion, that the register is not authorized to call for an explanation of orders pased by his official superior, but that if the requisition of a judge to his register should appear to the latter unauthorized by the regulations, he is at liberty to state his objections to the judge, in a respectful manner and in the English language, according to the spirit of Section 2, Regulation X. 1796, and the Court s circular instructions of 18th April, 1811 *

4. In the present instance, the Court are concerned to observe, that the Persian *roobakaree* of Mr Duntze was not only in opposition to the circular order above noticed, but also obviously deficient in the respect due to a superior court.

5 You are desired to transmit a copy of this letter to your register and require from him a more careful observance in future of the rules prescribed for his guidance.

May 21, 1817

No 274

1814
Reg I Secs 11 and 14

To the Acting Register of Zillah Bundlecund, dated the 18th June, 1817

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, without date, but received on the 16th instant with the papers therein mentioned, relating to cause, Sectaram and Jeewunram, plaintiffs, *versus* Rajaram and others, defendants

2. In reply to the question stated in your letter, I am directed to communicate to you the opinion of the Court, that the valuation of land paying revenue to Government, assumed in the first clause of Section 14, Regulation I 1814, for regulating the stamp duty on plaints in civil suits, is not applicable to the valuation of landed property in transactions between individuals coming within the provision of Section 11, Regulation I 1814

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* See printed Cir Ord. 8 D A No 26 page 18, part 1st, Vol. 1 Baptist Mission Press Edition

3. The Court are further of opinion that a mortgage bond, or deed of mortgage, such as that submitted with your letter, may be considered within the provisions for bonds, or other instruments for a specific sum of money consequently that the deed executed on stamp paper of two Rupees value, on a loan of 1000 Rupees, is regular and admissible in evidence

June 18, 1817

To the Judge of Zillah 24-Pergunnahs, dated the 2d July, 1817

No. 275
1814
Reg I Sec 11

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 26th ultimo

2 In answer to the first question submitted in that letter, I am directed to communicate to you the opinion of the Court, that account books *(khatahuhees)* cannot be considered to fall within the description of any of the documents required to be written on stampt paper, by the provisions of Section 11, Regulation I 1814

3. Upon the subject of the concluding paragraph of your letter, I am directed to transmit for your information, the enclosed copy of a letter written to the acting judge of Rajshahye, on the 17th February, 1816 *

July 2, 1817

To the Acting Judge of Zillah Nuddea, dated the 2d July 1817

No 276
1814
Reg XXIII
Sec 25

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 24th ultimo

2 In reply to the question submitted in that letter, I am directed to communicate to you the opinion of the Court, that the fourth clause of Section 25, Regulation XXIII 1814, which provides that "the answer, reply, and rejoinder in suits tried by the *moonsiffs* are 'not required to be written on stamp paper,' and which is extended by Section 11, Regulation III 1817, "to original suits and appeals not exceeding in amount or value the sum of "64 Rupees,† which may be instituted in the *zillah* or city courts," must be considered applicable to all pleadings in suits within the above limitation, including supplementary pleadings, *razeenamahs*, *soolehnamahs*, and *rufanamahs*, which are specified in Section 17, Regulation I 1814, with the answer, replication, and rejoinder

July 2, 1817

From the Judge of Zillah Etawah, dated the 14th June, 1817

No 277
1803
Reg XXXIV
Secs 9 10 and 12
Bengal 1793
Reg XV
Secs 10 and 11
1796.
Reg I Sec 2
1806
Reg XVII Sec 7

I beg leave to solicit the opinion of the Sudder Dewanny Adawlut on the following points

1 Are cases, which may be brought before the civil courts, under the provisions of Sections 9 and 10, Regulation XXXIV of 1803, to be disposed of by a summary inquiry and decision or are they to be considered as subject to all the rules prescribed for regular suits?

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* See No 239 page 80

† Extended to original suits and appeals not exceeding the amount or value 150 Rupees by Regulation X 1829, Schedule B Article 9

2 Is the specification of a stipulated period in deeds of mortgage, not coming under the denomination of *bye-bil wuffa*, legal and binding on the mortgager; or may the mortgaged property be redeemed at any time, under Section 9 of the above regulation, whenever the principal sum, with interest thereon, shall have been liquidated by the mortgager, although the mortgage bond may contain a condition that the mortgagee shall remain for a stipulated period in possession of the mortgaged property?

3. In the event of any objection or demur on the part of the holder of a deed of mortgage and conditional sale, to the surrender of the mortgaged property, which may be in his possession, in such case are suits instituted under Section 12, Regulation XXXIV. of 1803, and Section 7, Regulation XVII. 1806, to be investigated and decided in a summary way or otherwise?

To the Judge of Zillah Etawah, in reply to the above, dated the 9th July, 1817.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 14th ultimo, and in answer to the first question therein stated, (respecting cases of mortgage within the provisions of Sections 9 and 10, Regulation XXXIV. 1803,) to acquaint you, that the Court are not aware of any provision in the regulations for a summary suit in the cases therein referred to.

2. Upon the second question submitted by you, (concerning the legal operation of a stipulated period in deeds of mortgage, not coming under the denomination of *bye-bil wuffa*,) I am desired to acquaint you, that the Sudder Dewanny Adawlut can offer no opinion on the legality of specific deeds or mortgage, without having such deeds judicially before them.

3. In answer to the third question proposed in your letter, the Court direct me to refer you to their circular instructions, under date the 22d July, 1813.*

July 9, 1817.

No. 278.

1799. Reg. VII. Sec. 15, C. 4.

From the Judge of Zillah Dinagepore, dated the 24th April, 1817.

I beg leave, through you, to inform the Court of Sudder Dewanny Adawlut, that under an impression that the practice of under-farmers, who rent *malguzaree* lands from actual proprietors, re-letting them to others, and these latter again to others, so that the person with whom the actual cultivators have to deal may be many removes from the under-farmer holding immediately from the actual proprietor, has a tendency injurious to the welfare of the cultivators. and it appearing to me, that this practice had met with encouragement from the practice of the *dewanny adawlut*, in its having admitted under-farmers of every description to the benefit of a summary suit instituted under Section 15, Regulation VII. 1799, which section appeared to me to relate, so far as farmers are concerned, to *rudder* farmers only, I, agreeably to the above impressions, dismissed the suits of several under-farmers, who had sued for the recovery of arrears of rent by virtue of that section. A party in one of the dismissed suits appealed against my order, and I have this day received a precept from the court of appeal, together with the proceedings

* See printed Cir. Ord. S D. A No. 37, page 20, part 1st, Vol. I. Baptist Mission Press Edition.

of that Court, informing me that my order has been reversed, and purporting, as I understand the proceedings, that all suits of the nature described are triable under the provisions of the aforesaid section. The proceedings designate the appellants, or petitioners, *dur-ijaradars;* but do not teach, in a manner that satisfies my mind, how my order is otherwise than strictly conformable with the regulation with which the Court orders me to conform.

2. I esteem the matter important, and am induced to submit it for the consideration and orders of the Court of Sudder Dewanny Adawlut, anticipating that, should I happen to be right, the Court, by the support they will afford me, will discountenance a practice injurious to the welfare of the cultivators of the soil.

3. I beg leave to enclose a copy of the proceedings of the court of appeal which are above mentioned.

To the Judge of Zillah Dinagepore, in reply to the above, dated the 9th July, 1817.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 24th April last, with the *roobukaree* of the Moorshedabad provincial court therein referred to, in the case of Kishen Mohun Rai and others, farmers of Turuf Rughoonathpore.

2. It appears to the Court, that the term "farmer of land" in the fourth clause of Section 15, Regulation VII. 1799, is used in a general sense, and includes the description of under-farmers described in your letter.

3. I am directed to add, that as you wished to obtain the determination of the Sudder Dewanny Adawlut upon the construction given by the provincial court, your reference should have been submitted through the channel of that court, in conformity with Section 2, Regulation X. 1796, and you are desired to observe that rule more carefully in future.

July 9, 1817.

To the Secretary to Government in the Judicial Department, dated the 9th July, 1817.

No. 279.

Rights of Superintendents of Police and Magistrates to attend trials before the court of circuit, as public prosecutors.

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of a letter from you, dated the 20th ultimo, with copy of a letter from Mr. Blunt, acting superintendent of police in the lower provinces.

2. In criminal prosecutions of a public nature on the part of Government, which are now usually conducted by the *vakeel* of Government, the Court are not aware of any objection against employing the superintendent of police, or any other officer whom the Governor General in Council may judge it proper to appoint, (not being the committing magistrate,) to conduct the prosecution before the court of circuit, provided he be recognized as the prosecutor, or agent of Government for conducting the prosecution, and be not authorized to interfere, in any other capacity, in the trial before the court of circuit.

3. In cases of commitments made by the superintendents of police in their capacity of magistrates, the Court are of opinion, that, on a general principle, they should not be employed to conduct the prosecution before the court of circuit; though no objection would attach to the nomination of their assistants, or the assistants of the *zillah* and city magistrates, to manage the prosecution in such cases.

4. In the particular trial referred to by Mr. Blunt, the Court understood the commitment to have been made by him in his capacity of acting magistrate of the 24-Perguunahs, and that his wish was, not only to be present at the trial before the court of circuit, but, as expressed in the 3d paragraph of his letter to the second judge of the court of circuit, "to assist in the conduct of the prosecution," and "to afford information that might be required by the court."

5. With respect to the attendance of the superintendent of police at any criminal trial before a court of circuit under the restriction stated in the last paragraph of Mr. Blunt's letter of the 12th ultimo, viz. abstaining from any irregular interference in the trial, the Court see no material objection to it, provided the stated restriction be strictly observed. It may indeed, the Court think, be considered a privilege claimable by the public officers, in common with all other persons, of being allowed to attend an open court, though such privilege would not, of course, extend to any recognition of them in their official capacity.

July 9, 1817.

No. 280.

1807. Reg. I. Sec. 7. 1810. Reg XIII Sec. 4, C. 2.

To the Bareilly Provincial Court, dated the 28th August, 1817.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 9th instant, submitting copies of the papers required in my letter of the 23d ultimo.

2. On consideration of the above papers, and of your letter of the 25th June, and its enclosures, the Court directed me to communicate to you the following observations and opinion.

3. The Court remark, that the original powers of single judges of the provincial courts, under the provisions of Regulation I. 1807, were much enlarged by Regulation XIII. 1810, and that the powers vested in two or more judges by Section 7, Regulation I. 1807, were modified by Section 4, Regulation XIII. 1810; the fourth clause of which defines the cases wherein two or more judges may abrogate the orders of a single judge; viz. on the trial of depending causes, and respecting "points connected with the trial of the suit before the court."

4. In the case under consideration, the order of your third judge, passed on the 22d February, 1817, whereby the sons of Bacharam, deceased respondent in an appealed cause decided by two former judges on the 14th August, 1812, were made answerable for the costs of suit adjudged against the respondents, appears to have been given by him in pursuance of the second clause of Section 4, Regulation XIII. 1810, and must therefore, in the opinion of the Court, be considered of the same force and validity as if it had been passed by two or more judges.

5. Viewing the order therefore as a final judgment perfecting the decree passed on the 14th August, 1812, the Court are of opinion, that it could not be regularly revised without the permission of the Sudder Dewanny Adawlut; but it appearing to be the opinion of your second and third judges, that there are grounds for revising the order in question, and taking a further *ryavustha* from the *pundit* on the Hindoo law applicable to the case, the Court authorize a review accordingly.

August 28, 1817.

To the Dacca Provincial Court, dated the 18th September, 1817.

No. 281.

1813 Reg. VI Sec. 5. 1798. Reg. V. Sec. 7.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from your acting register, dated the 10th instant, requesting their opinion as to the competency of a provincial court to enter into the merits of a suit appealed from the decision of a *zillah* judge, passed under Section 5, Regulation VI. 1813.

2. In reply I am directed to acquaint you, that the Court concur in the opinion which you have expressed on this question, viz. that the rule contained in Section 7, Regulation V. 1798, regarding appeals from the summary processes of the *zillah* courts, must be considered applicable to the summary judgments passed by them under Section 5, Regulation VI. 1813, and that consequently, where the decision of the *zillah* judge may have been passed in conformity with the provisions of that section, no appeal can lie to the provincial court, except on the irrelevancy of the regulation to the case appealed.

September 18, 1817.

From the Additional Register at Ghazeepore to the Benares Provincial Court, dated 7th September, 1817.

No. 282.

1794 Reg. III Secs 16 and 19. Benares, 1800 Reg. V Sec. 27.

I had the honor, on the 10th current, to forward a *roobacaree* in reply to a precept received from your court, certifying my having forwarded a copy of your order for the information and guidance of the acting collector, and likewise that the Nawab Syud Ubdoolah, late acting *tuhseeldar* of Bulliah, is at large.

2. As however the order of your court appears to me to set aside the course prescribed by the regulations; as the present case is, I believe, the first of this nature which has occurred in the province of Benares; as the importance of it, with regard to the interests of Government, the authority of the collector and of the courts respectively, and the responsibility to which a judicial officer, who shall be found to exceed his competence in matters relating to the public revenue, may be held liable, appear to me to require that the course to be pursued, and discretion to be exercised by a judicial officer, on occasions of applications from the collector for the confinement of native revenue officers alleged to be defaulters should be clearly defined, I have taken the liberty of stating the reasons which appear to me to be against the validity of your order, and request you will be pleased to forward them, together with the papers of the case, for the information and orders of the superior Court.

First. It appears to me, that under Section 16, Regulation III. 1794, (extended to Benares by Section 27, Regulation V. 1800,) the courts are not authorized to enter into any previous inquiry as to the justice of the demand against a *tuhseeldar*, or other officer, forwarded by the collector as a defaulter, but are bound by the tenor of that section straightway to commit him, until he shall pay the amount demanded, or adopt the course pointed out by Section 19 of that regulation.

Second. It appears to me, that when a public officer, forwarded by the collector as a defaulter, has furnished the prescribed security, he must bring a suit before the court by which he has been committed, to prove the injustice of the demand against him, although he may not have paid the demand, or any part thereof; and that the suit is to be tried as a summary suit, and therefore is cognizable by a *zillah* court under the provisions of

Section 7, Regulation XIII. 1808, whether the amount thereof exceed or fall short of 5,000 Rupees.

Third. That the suit is to be brought to a hearing and decided upon, after examining the documents, and weighing the statements of both parties, and not on any *exparte* exhibits or allegations.

Fourth. That if the alleged defaulter omit to bring a suit within the period prescribed, the amount claimed is to be immediately levied and paid over to the collector.

Fifth. That since the regulation directs that personal security alone shall be taken from *tuhseeldars* and others, and contains no provision for proceeding against the security, unless the principal shall not be forthcoming, the courts cannot, on a motion on the part of the collector, adopt any summary proceeding against the security, unless the principal shall have absconded.

Sixth. That Regulation XXI. 1806, in no ways affects the responsibility of the *tuhseeldars* with respect to the papers and public assets under their charge, or deprives the collector of the remedy allowed him by the laws existing at the time when that regulation was passed.

3. On the above grounds, it appears to me that your court has exceeded its competence, under the existing laws, in entering into a previous inquiry, and directing the total discharge of Ubdoollah, and I request the opinion of the superior Court may be taken on that point.

4. I have the honor herewith to forward the papers of my court in the above case, for the purpose of being transmitted to the *sudder*.

Letter from the Benares Court of Appeal, dated the 6th October, 1817, enclosing the above.

By the desire of the additional register of Ghazeepore, we transmit an original letter of that officer, dated the 7th ultimo, with the Persian papers connected therewith.

2. Of our competency to pass the order of the 1st ultimo, to which Mr. Bird objects, we see no reason to doubt, and we are persuaded that if the collector pursues the course we prescribed, of urging Rooddeerram, the *malzamin*, to payment, the result will be perfectly satisfactory, both as regards the justice of the case, and as relates to the realization of the public revenue.

3. We see no sufficient ground for Mr. Bird's appealing from our order, and are of opinion that the regular course would have been for the collector of Ghazeepore, if he thought that order irregular, (which does not yet appear,) to have submitted his sentiments upon it to the commissioner of Benares and Behar, and have acquiesced in it, or appealed against it, as he might have been instructed from the Board to which he is subordinate.

4. For not entering into any detailed discussion of Mr. Robert Bird's letter, we beg leave to assign our total want of leisure from the regular and ordinary business of the appeal and circuit courts.

To the Benares Provincial Court, in reply to the above, dated 29th Dec. 1817.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 6th October, with the proceedings and letter from the additional register stationed at Ghazeepore, therein mentioned.

2. The case referred to in these papers has been separately brought before the Court by a petition from the *vakeel* of Government, at the instance of the acting collector at Ghazeepore, and the orders of the Court thereon, passed on this date, will be communicated to you in the usual course from the Persian department.

3. It is sufficient, therefore, to notice the general questions referred by the additional register at Ghazeepore, particularly those specified under the first and second heads subjoined to the second paragraph of his letter; and in answer to these, I am directed to communicate to you the following sentiments of the Court.

4. The Court are of opinion, that in the cases provided for by Sections 16 and 19, Regulation III. 1794, (extended to Benares by Section 27, Regulation V. 1800,) the civil courts are not authorized, on the application of a collector for the confinement of a defaulting *tuhseeldar* or other native officer, in pursuance of Section 16, to proceed in any other manner than according to the provisions of that section and Section 19.

Secondly. In the event of the alleged defaulter's denying the justness of the collector's demand upon him, and giving the security required by Section 19, to institute a suit in 15 days against the collector to try the demand, the Court are of opinion, that under the declaration in Section 21, Regulation III. 1794, (that the rules in Regulation XIV. 1793, are to be considered applicable to such suits,) the suit in such cases must be instituted and proceeded upon as a regular suit.

5. The original papers which accompanied your letter, are returned herewith.

December 29, 1817.

Letter to the Benares Court of Circuit, dated the 29th December, 1817.

No. 283. 1807. Reg. IX. Sec. 23.

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of a letter from you, dated the 28th ultimo, with its enclosures, and in answer to the general question therein referred, to communicate to you the opinion of the Court, that two or more judges of a court of circuit are fully competent, under the general powers vested in them by Section 23, Regulation IX. 1807, to annul an order passed by a magistrate imposing a fine on account of a contempt of court; as in all other cases, if the order appear from the magistrate's proceedings to be unjust.

2. The Court at the same time are of opinion, that, with a view to maintain a proper respect for the magistrate's office and authority, the courts of circuit should be cautious in rescinding orders passed by the magistrate for the punishment of contempts of court, stated to have been committed before the magistrate and in open court.*

December 29, 1817.

A Letter from the Judge of the City of Benares to the Benares Court of Appeal, dated the 8th September, 1817, *enclosed in the following letter.*

No. 284. 1808 Reg XIII Sec 12. 1814. Reg XXIII. Sec 46, Cl. 5.

I have perused a copy of your letter to the register of the Sudder Dewanny Adawlut, dated the 27th March last, and of the register's answer thereto, on the subject of the word "empowered," in the 5th clause of Section 46, Regulation XXIII. 1814.†

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* See Section 5, Reg. XII. 1821.

† See No 272, page 97.

2. I am fully aware, that the word alluded to was never intended to modify the rule prescribed by Section 12, Regulation XIII. 1808; but the question is whether an appellant has, under that rule, a right to stay the execution of the decree of a *moonsiff* by giving security. The section declares, that decrees for money and other moveable property shall be stayed or enforced in cases of appeal according to the rules now established and by those rules, (see Section 24, Regulation XL. 1793, extended to Benares by Section 2, Regulation XXXI. 1795,)* the judge of a *zillah* or city court has, in appeals from the *moonsiff*, a discretion to reject security tendered by an appellant, and to direct the execution of the decree appealed from, if he thinks proper.

3. In support of this opinion, I beg leave to subjoin the opinion of Mr. Fortescue, the late judge of Allahabad, extracted from the report of that officer to the Governor General, dated the 1st of September, 1814.

"The power of executing the decrees of the native commissioners and *sudder ameens* "pending a trial in appeal, is, under the regulations, discretionary with the *zillah* judge; "and I have experienced the advantage of carrying them into effect when no sufficient "reason could be alleged to the contrary, and the party who would become the re- "spondent was able and willing to give security in case of reversed judgment. No im- "mediate profit resulting from an appeal under such circumstances, it has very frequently "been relinquished altogether. My predecessors had adopted the general mode of staying "execution immediately on appeal, which proved an encouragement to that proceeding, "as appears from consulting the records of this court, which show that the proportion of "appeals to decisions were formerly much greater than at present. I cannot learn that the "measure I have adopted has been productive of any injury, nor has one person out of "forty, now imprisoned under decrees of the commissioners, preferred an appeal. I would "therefore recommend the exercise of a sound discretion in this particular."

4. I beg the favour of you to forward a copy of this letter, for further instructions from the Sudder Court.

Letter from the Benares Court of Appeal, dated the 6th Oct. 1817, *enclosing the above.*

We subjoin a copy of a letter from Mr. Bird, judge of Benares, dated the 8th ultimo, upon the subject of your letter of the 9th of April last,* regarding security in cases of money and other moveable property.

2. We see no reason to doubt the accuracy of the superior court's decision of the 9th of April; and the passage cited from Mr. Fortescue's letter appears to us to show nothing, but that Mr. Fortescue, who gave that opinion when he was a *zillah* judge, labored under the same mistake as Mr. Bird himself.

To the Benares Provincial Court, dated the 29th Dec. 1817, *in reply to the above.*

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 6th October last, with its enclosure from the judge of the city of Benares.

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* See No. 272, page 97.

2. In my letter of the 9th April last, you were advised of the opinion of the Court, that the provisions contained in Section 12, Regulation XIII. 1808, must be considered in full force, notwithstanding the expression "empowered," in the 5th clause of Section 46, Regulation XXIII 1814.

3. I am now directed to transmit for your information, and for the information of the city judge, the enclosed copy of a letter from the late judge of Allahabad, under date the 26th June, 1812, and copy of the letter written in reply on the 10th July following;* containing the determination of the Sudder Dewanny Adawlut, that execution of judgment for money or other moveable property must be stayed, if good and sufficient security be given by the appellant for performing the decision which may be passed upon the appeal.

4. At the period of this correspondence, the section cited by Mr. Bird, viz. Section 24, Regulation XL. 1793, (the terms of which correspond nearly *verbatim* with the 5th clause of Section 46, Regulation XXIII. 1814,) was in force, but has been since rescinded by Section 2 of the last mentioned regulation.

5. The Court further direct me to observe, that the terms of the 4th and 6th clauses of Section 45, Regulation XXIII. 1814, appear to imply, that if an appeal from a *moonsiff's* decree be admitted, and the prescribed security for staying execution in cases of appeal be given, the enforcement of the decree should be suspended during the trial of the appeal.

December 29, 1817.

No. 285.

1817
Reg XVII Sec. 14, Cl 2; and Reg XIX Sec. 16, Cl 2. 1814
Reg XXIV Sec. 12

* *From the Register of Zillah Bundlecund, dated the* 31*st December*, 1817.

By Section 14, Regulation XVII. 1817, in cases of perjury, registers are directed to send the case to the judge for commitment. It appears to me to be an anomaly, that I, as register with full powers stationed at a distance from the *sudder* station, must send a case for commitment to the judge at Bandah, whence it must be returned to me to be put on my calendar as joint magistrate; and that as joint magistrate I should have authority to commit in all cases.

2. By clause 2, Section 16, Regulation XIX. 1817, the judge is authorized to take security from defendants in summary suits, but registers with full powers, deputed to a distance from the *sudder* station, do not appear to have that power granted them. To apply to the judge for his sanction to their being admitted to bail, would be useless, for summary causes are generally soon decided.

3. I request you will do me the honor to obtain the opinion of the Court on these points, and to inform me of the result.

4. I should have sent this letter through the judge of this *zillah*, if he had not been absent on duty with his Excellency the Governor General.

To the Register of Zillah Bundelcund, at Culper, in reply to the above, dated the 4*th February*, 1818.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 31st ultimo, and to communicate to you the following observation of the Court upon the points therein referred.

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* See No. 106, page 28.

2. Upon the question stated in the 1st paragraph of your letter, the Court remark, that the rule of procedure against persons who may be guilty of perjury in a civil suit before a register, is clearly laid down in the second clause of Section 14, Regulation XVII. 1817, viz. that the proceedings, on which the charge of perjury may be grounded, shall be referred to the judge for his consideration and orders; but that it is not necessary, as you suppose, that the case should be returned to the register to be put on his calendar as joint magistrate, it being expressly declared in the same clause, that if the judge be of opinion, that there are sufficient grounds for bringing the accused party to trial before the court of circuit, he shall record his opinion to that effect; after which the whole of the papers relative to the case are to be transferred to the *cutcherree* of the magistrate, that the order of the judge may be carried into effect, and the case brought before the court of circuit in the same manner as if the charge had been instituted and proceeded upon in the court of the magistrate.*

3. With regard to the next point referred to in your letter, viz. whether a register vested with special powers under Section 12, Regulation XXIV. 1814, is competent, under the provisions of Section 16, Regulation XIX. 1817, to admit alleged defaulters and their sureties to bail pending a summary inquiry for recovery of arrears of rent, I am directed to communicate to you the opinion of the Court, that, as a register vested with full powers by Section 12, Regulation XXIV. 1814, and stationed at a place not being the station of the *zillah* or city court, is declared competent by the 7th clause, with the sanction of Government, to exercise original jurisdiction in the cognizance and trial of summary suits, the spirit of the rule in the 2d clause of Section 16, Regulation XIX. 1817, for admitting defendants to bail in such suits, must be considered applicable to registers so empowered and stationed, although not expressly included in the terms of the clause in question

February 4, 1818.

No. 286. *To the Benares Court of Appeal, dated the 4th February*, 1818.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt, on the 14th ultimo, of a letter from you, dated the 25th November last, with the correspondence therein mentioned, submitted at the request of Mr. F. C. Smith, acting register of *zillah* Bundlecund stationed at Culpee.

1796 Reg X. Sec 5. 2. On consideration of these papers, the Sudder Dewanny Adawlut are of opinion, that the prohibitory and general order issued by your court to the acting register on the 29th July, 1817, and confirmed on the 8th September following, directing him "not to call upon the *canoongoes* to attend *punchaits*, or act as arbitrators," exceeded your competency under the regulations in force.

1803 Reg XXI. 1813. Reg. VI. 3. The Court have therefore, annulled the order referred to, and directed me to communicate the following instructions for the future guidance of Mr. Smith in regard to the employment of *canoongoes* as arbitrators.

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* See a different construction in the second paragraph of No. 87, p. 20.

4. These officers not being declared by any regulations to be exempted from acting as arbitrators, and it being optional with them to accept or decline the office, as they may think proper, when elected by parties, the Sudder Dewanny Adawlut are of opinion, that it is sufficient to provide for their free exercise of this option.

5. There being some reason to apprehend, from the representations made to the collector, that, in the instances brought to the notice of the Board of Commissioners by that officer, the *canoongoes* were taken from their proper duties by the *chuprassees* of the register's court, and compelled to act as arbitrators, although this may have been done without the sanction or knowledge of the register, it is requisite that measures should be taken to prevent so objectionable a practice.

6. It may be left to the collector to notify to the several *canoongoes* under his authority, that they are at liberty to decline the office of arbitrator when proposed to them by individuals; but the Court direct, that the acting register be enjoined not to require their attendance on any future arbitration, without having ascertained that they are willing to undertake the duty.

7. The Court further desire, that in cases where the nomination of an arbitrator may rest with the civil court, the acting register will avoid, as far as practicable, the appointment of *canoongoes*; and, at all events, whenever the selection of them may be unavoidable, an immediate communication of the appointment should be made to the collector, to enable him to provide for the discharge of the duties on which the *canoongoe* may be engaged, and thereby obviate the inconveniences which are stated to have resulted from the employment of these officers without such communication.

8. You are desired to transmit a copy of this letter to the acting register at Culpee for his information and guidance.

February 4, 1818.

To the several Courts of Circuit, dated 4th February, 1818.

No. 287.

1803 Reg. LIII. Sec 5. Cl. 2. 1811 Reg. I. 1814 Reg. XI 1817 Reg. XVII Sec 8, Cl. 5.

By the fifth clause of Section 8, Regulation XVII. 1817, it is declared, that in all cases of conviction before the courts of circuit, of any of the offences specified in the preceding clause, when attended with wounding or other corporal injury in a slight degree, the judge of circuit may adjudge such punishment as may appear adequate to the offence, not exceeding 39 stripes with a *corah*, and imprisonment for fourteen years in banishment.

2. The offence of "burglary" being included in the Section above cited, a doubt has been entertained, whether it was intended to supersede the rules before in force for the punishment of this offence, contained in Regulation I 1811, and Regulation XI. 1814.

3. The Court think it necessary therefore to communicate to you their opinion, that the clause in question was not intended to alter any of the provisions relative to burglary, contained in the regulation above mentioned.

4. The first clause of Section 8, Regulation XVII. 1817, rescinds the second clause of Section 5, Regulation LIII. 1803, which contained provisions relative to murder, wounding, and other personal injuries, committed in the prosecution of theft or burglary, and the remaining clauses of the same section are substituted for the clause so rescinded.

5. The second, third, and fourth clauses of the section abovementioned refer to cases punishable with death, or with 39 lashes of the *corah*, and imprisonment and transportation for life. The fifth clause refers to cases in which a robbery, burglary, or theft, or an attempt to commit the same, may have been attended with wounding, or other corporal injury not endangering life; and, in such cases, authorizes the courts of circuit "to adjudge "such punishment as may appear adequate to the offence, not exceeding the sentence which "the courts of circuit are authorized to pass in cases of burglary by the first clause of "Section 3, Regulation I. 1811, viz. 39 stripes with the *corah*, and imprisonment for 14 "years in banishment from the district where the prisoner may have resided."

6. But nothing in the abovementioned clause expresses, or refers to any alteration of the rules before in force relative to burglary, when not attended with wounding or other corporal injury. On the contrary, in the following clause (the sixth) it is provided, that nothing in the preceding clause shall be construed "to authorize an enhancement of "the penalties declared by the regulations in force for burglary or theft, when not accom-"panied with wounding or other corporal injury;" and there would be an obvious inconsistency in supposing it to be intended that the courts of circuit should exercise a discretion in mitigating the penalties for burglary, attended with wounding or other corporal injury, beyond what they are authorized to exercise under the provisions of Section 2, Regulation XI. 1814, in cases of burglary and other inferior offences, not attended with wounding or other corporal injury.

7. The Court accordingly direct, that the rules contained in Regulation I. 1811, and Regulation XI. 1814, for the punishment of burglary, be still considered in full force, and applicable to all cases of conviction of burglary that may come within the fifth clause of Section 8, Regulation XVI. 1817.

February 4, 1818.

No. 288.
1793
Reg. XXXVI.

To the Register of Zillah Backergunge at Beerbhoom, dated the 25th February, 1818.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 5th instant, and to acquaint you in reply, that the Court are not aware of any objection to your nomination of Mr. Gardner, the assistant surgeon at Backergunge, to officiate for you in the registry of deeds, under Section 15, Regulation XXXVI. 1793, until the appointment of an acting register at that district.*

February 25, 1818.

No. 289.
1814.
Reg I. Sec 15, Reg XXVI Secs 2, 22 and 24

To the Provincial, Zillah, and City Courts, dated the 16th March, 1818.

A doubt having been entertained, whether copies of decrees and other documents filed with petitions for a special appeal, under Section 2, Regulation XXVI. 1814, should be considered liable to the rule contained in Section 15, Regulation I. 1814, as modified by Section 22, Regulation XXVI. 1814, I am directed to communicate to you the opinion of the Sudder Dewanny Adawlut, that all copies of decrees and other documents filed with

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* See the rules on this subject contained in Regulation IV 1824.

petitions of appeal in regular suits, (whether the appeal be special, or not,) must be considered within the rule above cited; with an exception *to vakulutnamahs*, and other documents exempted from the stamp duty on exhibits by Section 24, Regulation XXVI. 1814.

3. The Court at the same time are of opinion, that Section 15, Regulation I. 1814, and its modification in Section 22, Regulation XXVI. 1814, are not applicable to copies of decrees, or other documents, which may not be filed for record.

March 16, 1818.

To the Benares Court of Circuit, dated the 2d April, 1818.

No. 290.
1814
Reg XXV
Secs 11 and 12.

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of the following letters, with their respective enclosures, relative to the case of Bustee Lal, charged with forgery.

1st. A letter from your senior judge and your officiating judge, Mr. C. Smith, dated the 8th December, 1817.

2d. A letter from Mr. Cracroft, magistrate of *zillah* Juanpore, dated the 25th August, 1817, addressed to the register of the Nizamut Adawlut, and transmitted through your court.

3d. A letter from your officiating judge, Mr. J. B. Elliott, dated the 23d January, 1818.

4th. Another letter from ditto, dated the 5th February, 1818.

2. From the proceedings received with the above letters, which are returned herewith, it appears, that on the 29th June 1816, Bustee Lal, on a charge of forgery preferred by Jankee Zurgur, was held to bail by Mr. Cracroft, the magistrate of *zillah* Juanpore, to take his trial before the court of circuit at the next session of jail delivery for that *zillah*, viz. the second session of 1816, which was commenced before your officiating judge, Mr. Elliott, on the 22d December 1816, and concluded on the 21st January 1817. On the 20th January 1817, Mr. Elliott having read the magistrate's proceedings, and finding that neither Bustee Lal, nor his surety, Bahadoor Jhan, has attended the session, although the landed property of the surety has been attached through the collector by order of the magistrate, with a view to make good the sum of 500 Rupees, to which amount the surety was bound for the appearance of Bustee Lal; also, that further measures had been taken by the magistrate of Juanpore, through the magistrate of the city of Benares, to cause the attendance of Bustee Lal, he (the officiating judge) called upon the magistrate of Juanpore to report the result of such measures; and on the following day, viz. the 21st January 1817, being advised by the magistrate, that neither Bustee Lal nor his surety, Bahadoor Jhan, had appeared, he passed an order for postponing the trial of Bustee Lall in the following terms: "It appearing from the proceedings of the magis-"trate of Juanpore, dated the 21st January 1817, that notwithstanding the attachment of "Mouzah Dhumor, the property of Bahadoor Jhan, neither the defendant nor his surety, "Bahadoor Jhan, is in attendance, and it having been requisite that the defendant should "attend, and deliver his answer in this court on the trial of the case; and as the present "session is concluded, and the charge against the defendant cannot be tried without his

" attendance; ordered therefore, that a copy of this proceeding be sent to this magistrate of " *zillah* Juanpore, with instructions to cause the attendance of the defendant before this " court at the next session; the trial being postponed at the present session."

3. It further appears, that on the 18th of December 1816, nearly six months after Bustee Lal had been held to bail by the magistrate of Juanpore for trial before the court of circuit, he presented a petition, through his *vakeel* Rampersaud, to your officiating judge, Mr. C. Smith, at Benares, in which petition, after detailing the transaction on which the charge against Bustee Lal was founded, and stating different pleas against the truth of the charge, it was requested that the magistrate's proceedings might be called for, and the authority of the court of circuit at the *sudder* station interposed, on the declared ground, that the judge of circuit appointed to hold the *zillah* jail delivery was about to arrive, and the petitioner (Bustee Lal) entertained great apprehension that the judge of circuit might, without understanding the circumstances of the case, pass an order corresponding with that of the magistrate.

4. Mr. Smith, on receipt of this petition, instead of directing Bustee Lal to attend his trial before the judge of circuit holding the jail delivery at Juanpore, (which was evidently incumbent upon him,) appears from his proceedings of the 21st December 1816, to have required the magistrate at Juanpore to transmit his proceedings in this and another case, and to suspend execution of the orders passed by him (the magistrate) till the receipt of further instructions.

5. The magistrate, having, previously to the receipt of the requisition, made over the papers on the charge of Jankee Zurgur against Bustee Lal to the judge of circuit who was holding the jail delivery at Juanpore, communicated the same to the court of circuit at Benares, in a *roobakaree* dated the 30th of December 1816; which also noticed that Bustee Lal had absconded, and the amount of his bail had consequently been demanded from his surety.

6. On the 21st March 1817, your officiating judge, Mr. C. Smith, in consequence of a second petition from Bustee Lal presented by his *vakeel* Rampersaud on the 14th of that month, called again upon the magistrate of Juanpore for his proceedings on the charge of Jankee Zurgur, with directions to suspend the execution of the order of commitment against Bustee Lal till the receipt of further instructions; and on the 24th and 28th July last, Mr. Smith and your senior judge, (as stated in their respective proceedings on those dates,) not considering the magistrate's inquiry to establish sufficient grounds for bringing Bustee Lal to trial before the court of circuit on the charge of forgery preferred against him by Jankee Zurgur, annulled the magistrate's orders of commitment, with directions for a final discharge of Bustee Lal in this case, and for a return of the penalty of 500 Rupees levied from his surety, Bahadoor Jhan.

7. On a review of the above facts and circumstances, the Court of Nizamut Adawlut are of opinion, that your officiating judge, Mr. Smith, and your senior judge, who concurred with him, were not competent under the regulations in force to annul the magistrate's order of commitment, and direct the discharge of Bustee Lal, after the magistrate's proceedings had come before your officiating judge, Mr. Elliott, in the regular course of holding the jail delivery of *zillah* Juanpore, for the second session of 1816, and Mr. Elliott

had postponed the trial, in consequence of the non-appearance of Bustee Lal, with instructions to the magistrate to cause his attendance at the ensuing session.

8. It being expressly declared in Section 11, Regulation XXV. 1814, that the judges holding the *zillah* and city jail deliveries "in the trial of prisoners committed or held to "bail by the magistrate to be tried before the court of circuit, as prescribed by the "regulations, possess in conjunction with their law officers, the full powers which are "vested in the courts of circuit for the trial and punishment of criminal offences," the Court are of opinion, that the order passed by the officiating judge of circuit, on the 21st January 1817, was not open to revision by the other judges of your court at the *sudder* station, and could not be set aside, [as it virtually was, by the orders of Mr. Smith and your senior judge, passed on the 24th and 28th July 1817,] without the sanction of the Nizamut Adawlut, in pursuance of Section 24, Regulation IX. 1807.

9. At the same time the Court are of opinion, that the charge of forgery, preferred by Jankee Zurgur against Bustee Lal, was very imperfectly investigated by the magistrate of Juanpore, and that his proceedings do not contain sufficient grounds for bringing Bustee Lal to trial on this charge before the court of circuit.

10. Under this view of the case, the Court of Nizamut Adawlut have judged it proper to pass the following resolutions.

1stly. That the orders contained in the proceedings of your officiating judge, Mr. Smith, under date the 24th July 1817, and of your senior judge, under date the 28th of the same month, as far as they respect the charge of Jankee Zurgur against Bustee Lal, and the discharge of the defendant, be annulled as irregular.

2dly. That the order of commitment in the above case, passed by the magistrate of *zillah* Juanpore under date the 29th of June 1816, be likewise annulled; as not founded upon sufficient grounds to warrant the defendants being brought to trial before the court of circuit, under the general rule prescribed in Section 5, Regulation IX. 1793, extended to the province of Benares by Section 4, Regulation XVI. 1795.

3dly. That the above resolutions be communicated by the magistrate of Juanpore to Jankee Zurgur and Bustee Lal, and, in the event of the former being desirous to prosecute his charge against the latter, that the magistrate enter into a full inquiry, with a view to ascertain whether the alleged forgery was really committed; and if so whether there be sufficient evidence against Bustee Lal, to warrant the presumption that it was committed, or procured, by him. After completing this inquiry, (which should include an examination of the evidence offered by the defendant in refutation of the charge,) the magistrate will determine whether there be sufficient grounds for bringing the defendant to trial before the court of circuit, or otherwise, under the general rule above adverted to.

11. With regard to the enforcement of the penalty demandable from the surety Bahadoor Khan, in consequence of the non-attendance of Bustee Lal at the time appointed for his trial before the court of circuit at Juanpore, the Court are of opinion, that a forfeiture of the penalty was incurred by the non-appearance of Bustee Lal at the time appointed for his trial; and by a failure on the part of his surety to produce him, or assign satisfactory reason for his non-attendance. The magistrate, however, should in the first

instance have reported such failure to the officiating judge of circuit, and have obtained his authority for demanding the penalty previous to the enforcement of it.

12. Under all the circumstances of the case, the Court do not now think it necessary that the amount of the penalty which has been returned to the surety Bahadoor Khan, should be again demanded from him, provided he shall cause the appearance of Bustee Lal before the magistrate on the further inquiry above directed.

13. You are desired to transmit a copy of this letter to the magistrate of *zillah* Juanpore, for his information and guidance.

14. The Court adverting to the proceeding of your officiating judge, Mr. Smith, under date the 21st December, 1816, as noticed in the 4th paragraph of this letter, must caution him against any similar interposition in the regular course of commitment and trial prescribed by the regulations. Bustee Lal, the defendant in this case, having allowed several months to elapse after the magistrate's order had been passed for his being brought to trial before the court of circuit, without making any application to the court of circuit at the *sudder* station, and having at length applied to be relieved from the magistrate's order at the time when his trial was about to come before the court of jail delivery at Juanpore, there could be no valid reason for Mr. Smith's interposing his authority to prevent the regular course of trial, and the reasons stated in the petition of Bustee Lal were in the judgment of the Nizamut Adawlut altogether insufficient and inadmissable.

April 2, 1818.

No. 291.

To the Acting Chief Secretary to Government, dated the 6th May, 1818.

1799 Reg VII. Sec 29, Clause 3. 1801 Reg. I. Sec 10.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 28th ultimo, and its enclosure, relative to several estates attached by the acting judge of *zillah* Cuttack, as having been purchased under a fictitious or substituted name, in opposition to the third clause of Section 29, Regulation VII. 1799, and desiring the sentiments of the Court on the regularity of such attachment; as well as upon the course of proceeding which should be generally adopted under the clause above mentioned, whenever a breach of the provisions contained in it may be brought under the notice of the local officers, either in the judicial or revenue department.

2. On the general question above stated, the Court beg leave to cite the following extract from Section 10, Regulation I. 1801—"All purchasers of lands at the public "sales, are required to attend the collector of the district wherein the lands may be situ- "ated, either in person or by their representatives duly authorized, and to execute the "usual *cabooleat* and *kisthundy* for the public revenue, assessed upon the lands purchased "by them. In cases of doubt as to the real purchaser, or of suspicion that the purchase "has been made in opposition to the rules contained in clauses third and fourth of Section "29, Regulation VII. 1799, the collector is authorized to cause the personal attendance of "the alleged purchaser at his *cutcherree*, if resident within his jurisdiction; or, if the "purchaser be resident in any other *zillah*, the collector of such *zillah* is authorized and "required to cause the attendance of the purchaser at his *cutcherree*, on the application of "the collector in whose district the lands may lie, and to make any examination or

" inquiry that may be desired by the latter collector, or by the Board of Revenue, to whom " a full report is to be made in such cases for the orders of the Governor General in " Council, as directed in clause fourth of Section 29, Regulation VII 1799 "

3 Under the rule prescribed in the section above cited, the Court are of opinion, that the attachment made by the acting judge of *zillah* Cuttack of the estates referred to in his letter of the 2d ultimo, was irregular, and that he should be instructed to withdraw such attachment, and to communicate all information and evidence obtained by him relative to the illegal purchase of the estates in question to the collector of the district, for the purpose of enabling the latter to make the inquiry and report prescribed in Section 10, Regulation I 1801

4 The Court direct me to add, that a similar mode of proceeding should in their judgment be adopted, whenever a breach of the provisions contained in the third or fourth clause of Section 29, Regulation VII 1799, may be brought under the notice of the local officers of Government.

May 6, 1818.

To the Judge of Zillah Allahabad, dated the 9th July, 1818.

No 292

1814
Reg I Sec 9

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 24th ultimo, and in reply to communicate to you the opinion of the Court, that the construction given by Mr Smith to Section 9, Regulation I 1814, does not appear to be warranted by the terms of that section, which directs only that documents, which may not have been written on paper bearing the prescribed stamp, shall not be admitted in evidence, or otherwise received or filed in any court of judicature

If the plaintiff can prove his claim by other satisfactory evidence, the courts of justice are not precluded from receiving such evidence by any part of the regulation above mentioned

July 9, 1818

From the Judge of the Southern Division of Scharunpore, dated 18th June, 1818

No 293

1814
Reg XXVI
Sec 14

I request you will have the goodness to obtain and communicate to me the opinion of the Judges of the Sudder Dewanny Adawlut whether the provisions of Section 15, Regulation XXVI of 1814, preclude the *zillah* courts from executing a decree on the property of persons against whom it is given, (not at the request of the persons on whose favor it was passed,) but in satisfaction of a former decree given in favor of a third person against those in whose favor the second decree was passed, who has not been able to recover the amount from any property belonging to these persons, and who, it is stated, are about to adjust their claim with those against whom the petitioner solicits the decree may be enforced, in order that the amount may not be attached, should the decree be executed by application to the court.

To the Judge of the Southern Division of Zillah Seharunpore, in reply to the above, dated 9th July, 1818.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 18th ultimo.

2. In reply I am directed to communicate to you the opinion of the Court, that the provisions of Section 15, Regulation XXVI. 1814, were not meant to preclude the execution of decrees on the application of any party interested in the execution of them, and applying in the form prescribed by the fifth clause of that section.

3. In the case stated, supposing the holder of the former decree to have made the prescribed application, and that no other property is forthcoming from which the decree passed in his favour can be satisfied, the Court are of opinion, that he would have an equitable claim to attach the property receivable by his debtor, under the judgment in favour of the latter, and to cause execution accordingly, unless good and sufficient reason against the enforcement be shewn by the party against whom such judgment may have been passed.

July 9, 1818.

No. 294.

1795 Reg LXI Secs. 2, 3, 4, and 5.

To the Judge of Zillah Burdwan, dated the 20th August, 1818.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from the late judge of *zillah* Burdwan, (Mr. Bayley,) dated so long since as the 12th September 1811, and containing a reference respecting the allowance of batta in the adjustment of summary suits between landholders and their tenants, which by an oversight, does not appear to have been answered.

2. The Court find nothing in Regulation LXI. 1795, which can be construed to warrant a landholder in charging batta upon Sicca Rupees of the 19th *sun*, when paid to him by his under-tenants; whether such Rupees may be deficient in weight, more or less than six annas per cent.

3. It is declared in Section 2 of that regulation, that "all Sicca Rupees of the "nineteenth *sun*, which shall not have lost by wear a greater proportion of their full "standard weight than six annas per cent. or six-sixteenths of a Rupee in one hundred "Rupees, shall be considered as of standard weight, and be received as such in all public "and private transactions."

4. In Section 3 of the same regulation it is explained, that the above rule "is to be "considered applicable to those nineteenth *sun* Rupees only, in which the loss of weight has "been occasioned by wear;" and in Section 4, it is added, that "Rupees of the nineteenth "*sun*, deficient in weight from any other cause excepting wear, or deficient in weight from "wear in a greater amount than six annas per cent. are to be received agreeably to the "following rule. For one hundred Sicca weight of such light nineteenth *sun* Sicca Rupees, "the payer is to receive credit for one hundred nineteenth *sun* Sicca Rupees."

5. It appears to the Court, that the above rule should be observed in all payments of rent, made by under-tenants of land to the *zemindars* and other landholders, as well as in the payment of the latter to the public treasuries; and the orders of Government, under date the 20th June 1810, (a copy of which was transmitted by the collector of Burdwan to

the judge, with his letter of the 19th August 1811,) as understood by the Court, are perfectly consistent with the rules above-mentioned.

6. Those orders, which direct the officers of the revenue department to observe the rule suggested in the 6th paragraph of a letter from the Accountant General, dated the 16th June 1810, provide only against an abuse, which had arisen from mixing Rupees more deficient in weight than those described in Section 2, Regulation LXI. 1795, with Rupees which had not lost by wear so large a proportion of their standard weight as six annas per cent.; and causing them to be weighed together at the public treasuries, in the manner prescribed by Section 5 of the Regulation above-mentioned.

7. To guard against this abuse, it was proposed by the Accountant General, and ordered by Government, "that it be the duty of the proper officers to examine the Rupees "separately, and to reject all those which are more deficient in weight, than in the proportion of six annas per cent. and that the remainder be then weighed by fifties, according "to the present rule," viz. that contained in Section 5, Regulation LXI. 1795.

8. By the term "reject," in the above extract from the Accountant General's letter, the Court understand it to be intended, that Rupees deficient in weight in a greater proportion than six annas per cent. are not to be admitted as of standard weight, under Section 2, Regulation LXI. 1795, but are to be received according to the rule prescribed for the receipt of light Rupees, in Section 4 of that Regulation; while, at the same time, all Rupees of the nineteenth *sun*, which, by a separate examination, may not appear to have lost by wear a greater proportion of their standard weight than six annas per cent. are to be considered as of standard weight, and received as such in all public and private transactions, without any deduction of batta, or otherwise, in conformity with Section 2, of the Regulation above cited.

9. In communicating to you the above construction of the Regulations in force, relative to the receipt of 19 *sun* Sicca Rupees, I am directed to add, that in the judgment of the Sudder Dewanny Adawlut, this construction should guide your future decisions, in summary, as well as regular suits; and that no vague indefinite claim of batta should be admitted.

August 20, 1818.

No. 295.

1818
Reg. VI Sec. 8.
1807
Reg. IX Sec 6
1814
Reg XXV. Sec. 12.

Extract from a letter to the Secretary to Government in the Judicial Department, dated the 27th August 1818, submitting the Report on the monthly jail deliveries of the Suburbs of Calcutta and the 24-Pergunnahs, for June 1818.

Par. 3. The court of circuit have been informed, in answer to the remarks of the second judge, that the Court of Nizamut Adawlut do not consider the fourth clause of Section 3, Regulation VI. 1818, as meant to restrict a single judge of the court of circuit holding a *zillah* or city jail delivery from exercising, in concert with his law officer, the same discretion as heretofore, in allowing persons held to bail for trial before the court of circuit, to attend and plead upon the trial by a *vakeel* duly constituted; when strong and sufficient

reasons may be stated for dispensing with the personal attendance of the party, and his attendance in person may not be required by the provisions of the Mahommedan law.

4. The court of circuit have also been informed, in answer to the 8th paragraph of Mr. Rees's letter, that the Court do not understand it to be intended by the clause abovementioned, or by Section 6, Regulation IX. 1807, that the *vakeel* therein referred to must necessarily be one of the established pleaders of the civil court.

5. In answer to the question stated in the 9th paragraph of Mr. Rees's letter, the court of circuit have been further advised, that, in the judgment of the Nizamut Adawlut, a single judge of the court of circuit at the *sudder* station, when holding the sitting of the criminal court under the provisions of Section 12, Regulation XXV. 1814, is competent to reject applications made to the court of circuit in pursuance of the fourth clause of Section 3, Regulation VI. 1818.

August 27, 1818.

No. 296.

From the Acting Judge of Zillah 24-*Pergunnahs, dated the* 18*th September*, 1818.

1801. Reg VI. Sec. 7, Cl. 1.

By Section 7, clause 1, Regulation VI. 1801, *zumeendars* on whose estates *killaries* shall be proved to exist, are liable to a fine to Government of 5,000 Rupees; the same to be recovered by the sale of the *village* in which such *killaries* may have been established.

2. I request you will do me the favor to submit for the opinion and orders of the Sudder Dewanny Adawlut, whether, under the provisions above quoted, a separate penalty is recoverable for the *killaries* in each *village*, or whether one action only will lay against the proprietor of the estate, whatever may be the number of salt works existing on it.

To the Judge of 24-*Pergunnahs in reply to the above, dated the* 24*th September*, 1818.

In reply to your letter of the 18th instant, I am directed to state, that under the terms of the first clause of Section 7, Regulation VI. 1801, the Court are of opinion, that one fine only, of 5,000 Rupees, can be sued for, whatever may be the number of *killaries* within the same estate.

September 24, 1818.

No. 297.

To the Benares Court of Appeal, dated the 11*th December*, 1818.

1814 Reg XXVI. Sec 3 & 11. 1814. Reg XXVII. Sec 22. 1817. Reg XIX. Sec. 9

I am directed to acknowledge the receipt of your letter, under date the 15th September last, submitting a question, at the request of Mr. Bird, the joint register stationed at Ghazeepore, relative to the fees of *vakeels* in certain summary suits.

2. The Court observe, that the summary suit termed the *Kurmaha* case, which appears to have given rise to the reference, was a suit arising out of forcible dispossession from rent-free land.

3. The provisions of clause 11, Section 3, Regulation XXVI. 1814, which leave a discretion to reduce the *vakeels'* fees below a fourth of what would have been payable if the case were a regular one, and to fix them at such sum as shall be deemed a reasonable compensation, relate specifically to summary appeals against non-suits or dismissals on default.

4. By the provisions of Section 32, Regulation XXVII. 1814, pleaders employed in summary suits or appeals for arrears of rent, for recovering possession of land, and generally in all suits and appeals in which a summary process is authorized by the Regulations, were entitled specifically to one-fourth of the fee which they would have received, had such suits been instituted as regular and not as summary ones. To the provisions of this section, under which the *Kurmaha* case, (or case of dispossession from land,) would have come, the rules contained in Section 3, Regulation XXVI. 1814, had not been considered applicable, and therefore while the rules in question were in force, there was no discretion in such a case to reduce the fees below one-fourth of what they would have been in a regular suit. As the Regulations then stood, it is obvious, that the degree of trouble imposed on *vakeels* in many of the summary suits or appeals to which Section 32, Regulation XXVII. 1814, had reference, must have been very inadequate to the specific rate of compensation to which that rule entitled them. The above Section, therefore, (32, of Regulation XXVII. 1814,) with the one which follows it, were rescinded by Section 9, Regulation XIX. 1817, which makes the rule contained in clause 11, Section 2, Regulation XXVI. 1817, (wherein a discretion was given to reduce the fee,) applicable to all summary suits and appeals; and applicable therefore to the *Kurmaha* case, in which consequently the court of appeal might reduce the fees to such sum as it might deem reasonable: the maximum being one-fourth of what would have been payable had the suit been a regular one of the lands; and calculable on so many times the annual produce, in conformity to Section 25, Regulation XXVII. 1814.*

December 11, 1818.

To the Fourth Judge of Calcutta Court of Circuit, dated the 26th December, 1818.

No. 298.
1818.
Reg. XII Sec. 2.

I am directed to acknowledge the receipt of your letter, dated the 18th instant, on the subject of the provisions of the new Regulation XII. of 1818.

2. With respect to cases of burglary, provided for by that Regulation, and placed thereafter within the cognizance of the magistrate, if the offences have taken place and the commitments for trial been made, before the promulgation of the Regulation, and laid before the court of circuit subsequently to that period, the Nizamut Adawlut are of opinion, that as the court of circuit has discretion to mitigate punishment for burglary, under the third clause of Section 2 of the Regulation in question, to such degree as it may deem proper without restriction, that court should try the commitments to which you allude, adhering to the spirit of the new rules in apportioning the punishment in cases of conviction, so as to give the offenders the benefit of the mitigated penalties.

December 26, 1818.

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* See No. 300, page 120.

No. 209.

1818 Reg XII Sec 2, Cl 4 and 5 1811. Reg. I Sec. 2, Cl. 1, 2 and 3. 1814 Reg. XI Sec. 2, Cl 2, 3, 4, and 5.

To the Magistrate of Zillah Hoogly, dated the 26th December, 1818.

I am directed to acknowledge the receipt of your letter, dated the 21st instant, regarding the construction of certain provisions contained in Regulation XII. 1818.

2. In the burglaries within the cognizance of the magistrate, under the fourth and fifth clauses of Section 2, Regulation XII. 1818, the time of committing the offence, that is, whether it have been done during the day or the night, is not specified as material. But the punishment within the magistrate's competence being discretional while within the maximum of 2 years imprisonment and 30 rattans, it must also be within the magistrate's discretion to take into his consideration the time when the act was committed, as one among the circumstances of the case, which are to guide his judgment in apportioning the degree of punishment suited to the offence.

3. Under the discretion vested in the courts of circuit by the third clause of Section 2, Regulation XII. 1818, the Nizamut Adawlut are of opinion, that those courts may mitigate punishment in the offences therein alluded to below three years imprisonment, and to such degree as they may judge proper.

4. The provisions contained in clauses 1, 2, and 3, of Section 2, Regulation I. 1811, and in clauses 2, 3, 4, and 5, of Section 2, Regulation XI. 1814, appear to the court to be virtually superseded by the provisions of Regulation XII. 1818.

December 26, 1818.

No. 300.

1814 Reg XXVII. Sec 32 Reg XXVI. Sec 3.

To the Acting Judge of Zillah Dacca Jelalpore, dated the 29th January, 1817.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 14th instant, requesting instructions regarding the amount of fee to which pleaders are entitled in summary suits and appeals, which may be withdrawn; or dismissed on default; or adjusted by *razeenamah*.

2. The Court are of opinion, that under the general terms of Section 32, Regulation XXVII. 1814, the rule contained in the section, viz. that the *vakeels* employed in summary suits be "allowed for pleading such suits, a fee equal to one-fourth of the fee which they "would have received, had such suits been instituted as regular suits," must be understood to comprehend summary suits and appeals withdrawn or adjusted by *razeenamahs*, or dismissed on default, as well as those decided on investigations; and that, consequently, the rate of fee in all such cases must be a fourth of what it would have been, if the suits had been regular, instead of summary; viz. a fourth of the several proportions payable in regular suits under Section 31, Regulation XXVII. 1814; except in the summary appeals specially provided for by Section 3, Regulation XXVI. 1814, the eleventh clause of which authorizes the courts to award such fee as may be considered a sufficient compensation, not exceeding one-fourth of the fee to which the pleader would have been entitled in a regular suit or appeal.*

January 29, 1817.

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* See No. 297, page 118. This Construction is erroneously placed, it should have followed No. 264, page 92.

From the Third Judge of the Dacca Court of Circuit, dated the 16th January, 1819.

No. 301.
1818
Reg XII.
Sec. 2, Cl 3.

The Circular Orders of the Nizamut Adawlut, under date the 4th February, 1818,* explain the provisions of clause 5, Section 8, Regulation XVII. 1817; and are equally applicable to clause 3, Section 2, Regulation XII. 1818: but the mitigation in cases of conviction for petty burglaries before the magistrate, provided for by clauses 4 and 5 of the latter section, and the enhanced penalties to which persons might in certain cases be liable on conviction for such offences before the court of circuit, suggest to me the propriety of submitting the following query for the consideration and orders of the superior Court.

Query. In cases of persons committed for trial by a magistrate to the court of circuit, under clause 2, Section 2, Regulation XII. 1818, if it should not be established in the course of the trial that the burglary had been attended with any of the aggravating circumstances specified in that clause, would the judge of circuit be warranted in referring back the case for the magistrate to proceed according to the fourth and fifth clauses of the Section, or should he himself pass sentence according to the rules contained in Regulation I. 1811, and Regulation XI. 1814, referring, if deemed necessary, the trial to the Nizamut Adawlut for mitigation, conformably to the provisions of clause 5, Section 2 of the latter Regulation?

To the Dacca Court of Circuit, in reply to the above, dated the 29th January, 1819.

The Nizamut Adawlut have had before them, a letter from your third judge Mr. Paton, dated the 16th instant, on a subject connected with the provisions of Regulation XII. 1818.

2. In the instance supposed in the second paragraph of Mr. Paton's letter, the Nizamut Adawlut do not think it would be proper to refer the case back to the magistrate who made the commitment, inasmuch as the judge of circuit who tries the case may, under the third clause of Section 2, Regulation XII 1818, as construed by the Court,† mitigate the punishment at his discretion as low as he may think fit, whatever the circumstances of the burglary shall on conviction appear to have been; and may pass sentence under that regulation. In the event of commitments being made by a magistrate, by error or negligence, in cases which, under the regulation above quoted, he might have disposed of himself, it will be incumbent on the judge of circuit (where he sees sufficient ground) to report the magistrate's mode of proceeding to the Nizamut Adawlut for their orders; but still to try such commitments as have been made under the second clause of Section 2, of the regulation quoted.

January 29, 1819.

To the Acting Judge of Zillah Backergunge, dated the 28th May, 1819.

No. 302.
1806
Reg II. Sec. 11.
1814
Reg. XXIII.
Sec. 45, Cl. 7.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 17th instant, together with its enclosure; and in reply to acquaint you, that the Court do dot consider the case of the petitioner referred by you‡ to come within the provisions of Section 11, Regulation II. 1806.

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* See No. 287, page 109 † See No. 298, page 120.

‡ The petitioner, confined for arrears of sbcarce rents due to Government, applied to the *zillah* court, to be released under the provisions of Sec 11, Reg. II. of 1806

2. In reply to the question contained in the fourth paragraph of your letter above acknowledged, I am further directed to communicate to you the opinion of the Court, that the rule contained in clause 7, Section 45, Regulation XXIII. 1814, cannot be held applicable to the cases of individuals in confinement, at the requisition of the collector; it being provided for by that clause, "that no person, from and after the 1st February 1815, shall "be liable to personal confinement *in satisfaction of decree* for any sum not exceeding "sixty-four rupees, beyond a period of six months."

May 28, 1819.

No. 303.
1818.
Reg. XII.
Secs. 2, 3, and 4.

From the Superintendent of Police, Western Provinces, dated the 28th June, 1819.

I beg leave to submit the following observations for the consideration and orders of the Nizamut Adawlut.

2. It is enacted by clause 2, Section 2, Regulation XII. 1818, that if the amount or value of property stolen in a burglary shall exceed the sum of one hundred rupees, the offender shall be committed for trial before the court of circuit; thus prohibiting the magistrate's punishing those who may be guilty of burglary to that extent. By Section 3 of the same regulation, the various degrees of theft are defined, with the penalties attached to each; and the magistrates are empowered to hear and determine, without reference to the courts of circuit, all cases unattended with aggravating circumstances, and also to exercise their discretion in committing for trial any prisoner charged with theft, who may, from bad character, prior conviction, or from any other peculiar circumstances, appear to them deserving of a severer punishment than they are authorized to inflict.

3. Now I beg leave to submit, that, in the first case, the magistrate is bound to commit the prisoner who has been guilty of burglariously stealing to the amount of one hundred rupees, or upwards; and in the second, he is to be guided by peculiar circumstances, and is allowed to exercise his discretion in punishing or committing. I conclude that value of property may be admitted as one of these circumstances; but as the law does not fix an amount, there may be, on that subject, as many opinions as there are courts: indeed, I am acquainted with one magistrate, who understands the above law to prohibit his committing a thief, whatever may be the amount stolen, under the idea, that had the value of property been a circumstance capable of aggravating the offence, the sum would have been fixed, as in the law regarding burglary.

4. As it is obvious that such a conclusion was never contemplated by the legislature, I would recommend the removal of all grounds for forming it, by fixing an amount beyond which the magistrate shall be declared incompetent to inflict punishment on a thief.

5. I also beg to take this opportunity of noticing to the Court, that Section 4 of the above quoted regulation contains rules for the punishment of receivers of property obtained in the perpetration of robbery by open violence or of theft, but makes no mention of burglary. This appears to me to be an important omission; for although there is no doubt of the intention of the law, it is necessary that such publications should not admit of the possibility of a doubt or misinterpretation.

To the Superintendent of Police, Western Provinces, in reply to the above, dated the 9th July, 1819.

The Nizamut Adawlut have had before them your letter of the 28th ultimo, submitting questions connected with the construction and provisions of Regulation XII. 1818.

2. As observed in your letter, the above quoted regulation limits the cognizance of the magistrate as a criminal judge, in cases of burglary, to those cases when the property taken is not more than 100 rupees; directing that where it exceeds that sum, the magistrate must commit; whereas, in cases of theft, the same limitation as to the amount is not made, the magistrate being left to his discretion, on the circumstances and features of the case.

3. The Nizamut Adawlut apprehend, that this was not an omission, but was the intention of the regulation; there being obviously a difference with regard to the degree of guilt, between theft in prosecution of burglary, and simple theft.

4. The Court do not think it necessary to specify particularly the punishment for knowingly receiving property acquired by burglary. It is evident that this comes under the general definition of property acquired by theft, which is provided for generally, and discretion left as to the degree of punishment, according to the circumstances, provided it do not exceed certain specified limits.*

July 9, 1819

To the Superintendent of Police for the Western Provinces, dated the 6th August, 1819. No. 304

1816. Reg XXII.

The Nizamut Adawlut have had before them your letter, under date the 26th ultimo, with its enclosures.

2. In reply, I am directed to communicate to you the opinion of the Court, that under the provisions of Regulation XXII. 1816, no one individual can be assessed in the same town or city at a greater sum than one rupee for the *chowkeedaree* assessment, whatever be his property in such town or city.

August 6, 1819.

To the Calcutta Court of Appeal, dated the 27th August, 1819. No. 305.

1805 Reg. II Sec 14. Clause 3.

I am directed to reply to a certificate, signed by your senior judge, and accompanied by a proceeding of the court of appeal held before him on the 23d ultimo; which submits a question, whether a cause having come by special appeal before a *zillah* judge, the appeal being from a decision by himself as register, the provincial court are competent to remove the proceedings and try the appeal, under the provisions of clause 3, Section 14, Regulation II. 1805; there being no particular mention made of special appeals.

2. The Court direct me to answer the question in the affirmative; the word *appeals* used in the clause quoted being general, and special appeals coming equally within the reason of the rule.

August 27, 1819.

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* See Section 4, Regulation IV 1820, which provides, that in cases of theft when the amount stolen shall exceed 300 Rupees, the accused shall be committed for trial to the court of circuit and Section 4, Regulation VI. of 1824, which provides for the commitment of the receivers, when the amount stolen shall exceed 300 Rupees.

No. 306.

To the Moorshedabad Court of Appeal, dated the 3d September, 1819.

1809. Reg. VIII. Sec 3.

The Sudder Dewanny Adawlut have had before them your senior judge's letter, under date the 28th ultimo, on a general question regarding the removal of ministerial native officers of the provincial courts, and particularly adverting to the cases of Buncharam and Ramsoonder, *serishtadar* and *paishkar* of the Moorshedabad court.

2. The Sudder Dewanny Adawlut do not undertake to give you instructions how to act in these cases, which must be left to your discretion; but direct me to offer the following observations.

3. Under the provisions of Regulation VIII. 1809, Section 3, the power of removing their own ministerial native officers is vested in the provincial courts; by which is implied the power of removal on such grounds as the regulations declare sufficient for such a measure.

4. The fifth clause of Section 5 contains a general declaration with regard to all native officers, and must, in the opinion of the Court, be considered to include ministerial officers of the provincial courts, and that they shall be removeable, without proof to any specific act of misconduct, whenever there shall be sufficient reason to deem them incapable, or in any respect unworthy of public confidence.

5. If Moonshee Ramsoonder cannot give a reasonable account of his possessing so much more property than the lawful emoluments of his office seem to authorize, the Court would deem the fact of his possessing that property a sufficient ground for presuming him a person unfit for public confidence.

6. With regard to the stated incapacity of the *serishtadar*, if this be the conclusion of the provincial court, from the present mode in which the duties of his office are performed, it is a ground recognized by the regulations as sufficient for removing him.

September 8, 1819.

No. 307.

To the Bareilly Court of Circuit, dated the 3d *September*, 1819.

1816. Reg XII. 1814 Reg XV.

The Nizamut Adawlut have had before them your letter, under date the 17th ultimo, with its Persian enclosure.

2. The point therein submitted to the court, is, whether on two cases of conviction of theft before a magistrate, by one offender, he can, in each, award imprisonment to the extent allowed by Regulation XII. 1818, namely, two years, the whole making a sentence of four years; or whether, if he consider the offender to deserve, on a consideration of both cases, more than two years imprisonment, his jurisdiction is excluded, and a commitment must take place.

3. The Nizamut Adawlut consider the latter conclusion to be the right one, and that the magistrate, in punishing two or more offences committed by the same person, cannot go beyond the punishment within his discretion under Regulation XII. 1818.

4. The principle of Regulation XV. 1814, with regard to the power of courts of circuit in the punishment of two or more offences, appears equally applicable to the magistrates acting under Regulations XII. 1818. By neither can the ordinary limit of punishment be exceeded in convictions of two or more offences; and each, if they deem

the punishment within their competence insufficient, as applied to all the offences charged, must submit the case to the higher court.

5. The principle will apply, as well to two or more convictions before a magistrate on the same day, as to a subsequent conviction of another offence committed previously to the first conviction and sentence of an offender. If, in the case first tried, the magistrate shall have awarded punishment to the extent of his powers, he must commit the last case to the court of circuit, who will award such further punishment as may be fit, taking into consideration the first conviction and sentence.

6. The court of circuit, who have before them the two cases in question tried by Mr. Glyn, will of course act under the construction now given regarding the magistrate's powers. They will probably consider the proper mode of proceeding to be a commitment of the two cases for the next monthly sessions.*

September 3, 1819.

To the Judge of the City of Benares, dated the 19th November, 1819. No. 308.

The Sudder Dewanny Adawlut have had before them your letter, under date the 25th September last, with its several enclosures, and direct me to communicate the following observations and orders.

2. In this case, [of Baboo Gobind Das *v.* Koosager,] the point submitted is, how far there is, or is not, a discretion in the civil courts, as to enlarging imprisoned persons under the rules contained in Section 11, Regulation II. 1806, regarding insolvent debtors confined in execution of decrees of the civil courts. The Court are of opinion, that under those rules a debtor is entitled to his release on making what the civil court, [subject to the controul of the court of appeal,] shall deem a fair discovery and surrender of all the property he possesses, without regard to the amount of his debt, or the time he may have been imprisoned under the decree. The provisions of clause 7, Section 45, Regulation XXIII. 1814, make no alteration in the above rules, except in fixing a maximum of time, during which a debtor shall be subjected to imprisonment in satisfaction of a decree for a sum not exceeding 64 rupees.

1806. Reg. II. Sec. 11. 1814 Reg. XXIII. Sec. 45, Cl. 7.

3. The Court desire to be considered as not giving an opinion whether the above construction would, or would not, include the case, (or one of similar features,) in which a native officer should be confined in execution for the refund of embezzlements made by him.

4. The point here [in the case of Mussamut Jurao and Soobdee] is, whether the provincial court (two judges sitting) were competent to order the city judge to interfere by summary process to prevent Munsa and others from molesting the petitioners in the possession of a *bagh* or garden, the city judge contending that they must be left for redress, if they required any, to a regular suit.

Summary interference of the provincial courts to prevent dispossession

5. It appears from the city judge's proceedings of the 9th June, that the petitioners were then in peaceable possession of the garden in question, and that the defendants acknowledged the fact, and engaged not to molest them again; that they complained

* The case contemplated in this construction has been provided for by Regulation VI 1824

afterwards of the defendants' again molesting them in the peaceable possession. Under such circumstances, the Court are of opinion, that the provincial court could properly direct Mr. Bird to interfere summarily to prevent the petitioners being ejected, though the order should have gone from the criminal department to Mr. Bird as magistrate.

6. The cases cited by Mr. Bird do not appear to be in point. In one, the Sudder Dewanny Adawlut held, that a claim for arrears of wages could only be tried in a regular suit, under the then existing law; in the other, that a *ryot*, ousted as a defaulter, rightly or wrongly, but without force, had no redress after he had been dispossessed, except in a regular suit. There the dispossession had taken place, and, as it turned out without a breach of the peace: in the case now in question, dispossession had not taken place, but was only apprehended, and a breach of the peace must be assumed as not improbable.

1807. Reg I Sec 4, Cl. 2.

7. In this case, [of the execution of a decree,] the Court have not a copy of the decree; but they observe that it was a decree for a sum of money, passed in an original suit tried before the provincial court, and they conclude it to have been passed by Mr. C. Smith, and sent to the city court to be executed. When the plaintiff pointed out certain immovable property as belonging to the defendants and required its sale to satisfy the decree, a third party, a stranger, comes in and states part of the said property to be his, which, as far as then appeared, the city judge was inclined to believe, and ordered its sale to be stayed till he should inquire further into the matter, and the plaintiff should explain his own alleged title. The question is, whether, under such circumstances, Mr. C. Smith, having the subjects collaterally brought before him, and not by petition from one of the parties, could, sitting alone, set aside the city judge's order for staying the sale, and direct the sale of the property claimed by the third party to be proceeded in.

8. The Sudder Dewanny Adawlut are of opinion, 1. That the city judge, though not under any obligation so to do, might without impropriety have referred the matter at once for the court of appeal's orders, as to whether the property should or should not be sold in execution of their decree; and only inquired into the truth of the matter stated by the third party, if the court of appeal had desired him. 2. That the city judge having undertaken to pass an order provisionally suspending the sale of the property, until he should be further satisfied as to the matter, it required two judges of the court of appeal to set aside that order, viewed as a miscellaneous order of the city court, and to direct the sale to be proceeded with.

9. The Sudder Dewanny Adawlut therefore rescind the order to that effect, passed by Mr. Smith singly, unless it shall be confirmed by another judge of the court of appeal, to whom you will recommend the party interested to apply.

November 19, 1819.

No. 309.

To the Judge of Zillah Moradabad, dated the 17th December, 1819.

1803 Reg. XXVIII. Sec. 17. Cl. 1. 1806 Reg. II. Sec. 11.

The Sudder Dewanny Adawlut have had before them your letter of the 20th ultimo, with its enclosure, relative to the case of Radha and Pran.

2. It is observed from your proceedings, that these persons were imprisoned on the 18th September, 1816, under a summary sentence passed by you as judge, in pursuance of clause 1, Section 17, Regulation XXVIII. 1803, for having aided and abetted in withdraw-

ing certain cattle, attached for arrears of revenue due to Government; the sentence reciting, in pursuance of that rule, that the defendants were to pay the costs of suit, and to be imprisoned until the property withdrawn for attachment should be restored; or until the balance for which the attachment was made, amounting to above 800 rupees, should have been made good. And it is further observed, that neither of these conditions have been fulfilled; but that the defendants, alleging insolvency, and having made oath thereto, demand the benefit of the rules contained in Section 11, Regulation II. 1806, in favour of persons in confinement under decrees of the civil courts.

3. The above terms, which are taken from the regulation quoted, are general, so that the Court have held in former instances, that they include certain classes of summary cases, where any thing in the form of a summary decree by a civil court has actually been passed, and the defendant is in confinement under it as a debtor; but they are of opinion that the case in question does not, taken altogether, come within the provision of those rules.

4. The Court observe, however, that the case of these defendants, who have been in jail more than three years, is a hard one; and they recommend that you suggest to the defendants, to petition the Board of Commissioners, affording them a copy of this letter and of the proceedings in their case, for the purpose. It is probable that the revenue authorities may afford them relief, or at all events, that they will ascertain whether the proper steps have been taken towards recovering the balance of revenue. You will report the result for the Court's information, in order that if relief should not be afforded under the orders of the Board of Commissioners, the Court may consider what further measures on their part the case will demand.

5. I am directed to add, that, in respect of the costs of suit, should the defendants ultimately be confined for these solely, the other parts of the sentence having been got over, the benefit of the insolvent rules may be granted.

December 17, 1819.

To the Acting Judge of Zillah Mymensing, dated the 1st January, 1820.

No. 310.

1799. Reg V. Secs 3 and 4. 1800 Reg I.

The Sudder Dewanny Adawlut have had before them your letter, under date the 18th ultimo, reporting the decease of Bhowance Chowdraen, widow of the late proprietor of one anna, five gundas, forming part of the nine anna share of Pergunnah Sheerpore, now in course of partition, in pursuance of a decree of this Court.

2. It is observed, that you mention an adoption by the widow under alleged authority from her husband, which alleged authority is denied by the husband's collateral heirs, who have failed, however, in a criminal prosecution to establish that the written authority was a forgery; and that you submit to the Court two points; 1, that the adopted son's right be acknowledged; 2, that the natural father of the adopted son, now a minor, be nominated his guardian and manager of the estate.

3. I am directed to state, with respect to the first point, that the right being disputed, all that can be now admitted, is the possession of the fractional portion of the estate held by the deceased widow; and the nine anna estate being stated to be under attachment, there can at present be only a symbol of possession, consisting of being registered as the person holding the fractional share, and being acknowledged as the person to whom the

profits are payable. Your letter does not state, whether any or what part of this has taken place in favour of the alleged adopted son.

4. Should it have so taken place, and the possession, as far as possession can be now had, rest with the alleged adopted son, or even if there be no possession at all on either side, it appears to the Court, that under the provisions and spirit of Regulation V. 1799, the adopted son's possession should be acknowledged and upheld, provided you are satisfied, from what you have seen, that there is reasonable ground to believe his title good, and provided, on the collateral heir of the adoptive father filing a regular suit to try the question of right, sufficient security be given on his (the adopted son's) part for compliance with the judgment which may be passed. on failure of which security, and on its being given by the other claimants, their possession should, on the other hand, be acknowledged.

5. With regard to the second point, namely, appointing a guardian to the minor; if he be considered the adopted son of the widow's husband, you must be guided by the provisions of Regulation I. 1800, which authorize the appointment, by the civil court, of a guardian to a minor landholder, provided he be a sharer in a joint estate paying revenue immediately to Government, and all the other sharers be not disqualified persons. Your appointment of a guardian in such case would be subject to the controul of this Court, in the mode provided for by Section 7 of the above quoted regulation.

January 1, 1820.

No. 311.
1813
Reg. VI. Sec. 5, Cl. 1. 1793.
Reg XLIX. 1793
Reg V. Sec. 7.

To the Patna Court of Appeal, dated the 7th January, 1820.

I am directed to acknowledge the receipt of your letter, dated the 19th June last, submitting a question relative to summary decrees passed under clause 1, Section 5, Regulation VI. 1813.

2. The Court are of opinion, that those decrees must be considered open to appeal, but on the question of irrelevancy only. The summary decrees passed under Regulation XLIX. 1793, are expressly declared open to appeal on that ground by Section 7, Regulation V. 1798, and the rule must equally apply to the decrees in question.

January 7, 1820.

No. 312.
1814
Reg. I.

To the Moorshedabad Court of Appeal, dated the 1st April, 1820.

The Court having had before them your second judge's letter, under date the 13th ultimo, I am directed to communicate their opinion, that, under Regulation I. 1814, a deed of gift, drawn on unstampt paper by an attorney in Calcutta, for the conveyance of property at Moorshedabad, the donor being at the time a resident of Calcutta, and the donee a resident of Moorshedabad, is not admissible as evidence in our courts, as not being on the paper required by the regulation above quoted.

2. Your second judge has not stated the date of the deed to which his letter has reference, but the Court have assumed its execution to have been subsequent to the period at which the operation of Regulation I. 1814, commenced.*

April 1, 1820.

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* See however the construction of 11th Aug 1820, No. 124, page 119.

To the Acting Judge of Burdwan, dated the 5th May, 1820.

No. 313.

The Sudder Dewanny Adawlut have had before them your letter of the 29th ultimo.

2. On the second of the two points submitted, viz. whether the provisions of Regulation VII. 1799, are applicable to *lakhirajdars*, the enclosed extract (paragraph 5) from the resolutions of the Court under date the 22d January, 1805, is transmitted for your information and guidance. This, you will perceive, decides the point in the affirmative, assigning as the reason, that the words in the regulation are general

1799 Reg. XVII. 1795 Reg XXXV. 1799 Reg VII. 1803 Reg XXVIII.

3. With regard to the other point, whether *lakhirajdars* can have the advantage of Section 8, Regulation VIII. 1819, the Court observe, that the words of that section expressly specify "*zemindars*, that is, proprietors under direct engagements with Government," and that, therefore, the provisions of it must be considered restricted to the persons specified.

1819 Reg VIII Sec 8.

Extract from the Resolutions of the Court of Sudder Dewanny Adawlut, under date the 22d January, 1805.

PAR. 5. The Court further observe, that the original decision of the judge, dismissing the summary suit brought by the plaintiff under Regulation VII. 1799, on the ground of that regulation not being applicable to claims for arrears of rent due from lands exempt from the public revenue, was erroneous and unwarranted by the Regulations. The terms of Regulation VII. 1799, as well as Regulations XVII. 1793, and XXXV. 1795, therein referred to, being general, must be considered applicable to all claims for arrears of rent, whether due from lands paying revenue, or from lands held exempt from the public revenue, as has been declared by this Court in former instances.

May 5, 1820.

To the Magistrate of Juanpore, dated the 5th May, 1820.

No. 314.

The Nizamut Adawlut have had before them your letter, dated the 26th ultimo.

1820 Reg III. 1806 Reg. XI

I am directed to state in reply, that the provisions of Regulation III. 1820, appear to the Court restricted to prohibiting compulsory exaction of the service of individuals as porters or *coolies*, in aid of travellers, or marching troops: that the prohibition extends; 1, to such service being compelled by travellers, or marching troops; 2, to its being compelled for them by the civil authorities; that, with the last exception, the rules of Regulation XI. 1806, stand as they were.

May 5, 1820.

To the Judge of Zillah Furruckabad, dated the 26th May, 1820.

No. 315.

The Sudder Dewanny Adawlut have had before them your letter, dated the 27th ultimo.

1803 Reg XXVII. Sec 11

2. In reply I am directed to state the opinion of the Court, that the process described in Section 11, Regulation XXVII. 1803, for confining the person of a revenue defaulter at the instance of the collector, may be had recourse to an account of all arrears of revenue of whatever standing, and cannot be considered as limited to balances arising within a period not exceeding one year.

May 26, 1820.

No. 316.

To the Judge of Zillah Moradabad, dated the 2d June, 1820.

1803. Reg XXVII. Sec 14. Reg XXVIII. Sec 17. 1805 Reg II. Sec 6.

The Sudder Dewanny Adawlut have had before them your letter of the 16th ultimo

2. It is understood by the Court to embrace two points: *First*, what is the limitation of time as to process by a collector for arrears of revenue, under Section 14, Regulation XXVII. 1803, by attachment and sale of a defaulter's personal property? *Secondly*, what is the limitation of time in respect of the summary proceeding at the collector's instance, under Section 14, Regulation XXVII. 1803, and Section 17, Regulation XXVIII. 1803, in the event of the attached property being removed, by force or fraud, by the defaulter, or his people.

3. On the first point, I am directed to state, that the Court hold it to be competent to a collector to resort to the process described in the regulation first quoted for balances of whatever standing. On the second point the Court hold, that the summary proceeding under Section 17, Regulation XXVIII. 1803, which clearly involves the adjudication of a penalty by the civil court for having withdrawn attached property, is limited in point of time, under Section 6, Regulation II. 1805, to one year from the occurrence of the act which gives rise to the proceeding; unless Government being the party suing, (which it virtually is, in the person of the collector), there be good cause shewn for delay, beyond that period.

June 2, 1820.

No. 317.

From the Acting Magistrate of Zillah Bundlecund, N. D., dated the 16th June, 1820.

1812. Reg. I. Sec. 22

I have the honor to forward, for the opinion of the Nizamut Adawlut, copy of a letter from the acting collector of this *zillah*, with its enclosure, and request the instructions of the Court as to complying or not, with the requisition therein made.

2. On a reference to Sections 22, 23, and 24, Regulation I. 1812, it appears to me, that the *darogahs* of *chowkees* therein alluded to, are *darogahs* of *chowkees* under the authority of the collectors of customs, not police officers; and as police officers are not enjoined by Section 29, Regulation XX. 1817, to take the active part, to prevent the evasion of duties, required by the Board in the present instance, I presume that such interference would be improper and against the regulations.

3. The duties of police officers are already very numerous, and need no addition.

Copy of a Letter from the Acting Collector of Calpee, to the Acting Magistrate, N. D. Bundlecund.

I beg leave to forward, for your information, extract of a letter from the Board of Commissioners, under date the 30th ultimo, and request that you will issue orders to the police officers under your control, as therein required.

Extract of a Letter from the Secretary to the Board of Commissioners to the Acting Collector of Calpee, under date the 30th May, 1820.

PAR. 4. Sections 22 and 23, Regulation I. of 1812, with a view to prevent the evasion of duties in the manner noticed in this paragraph, direct, that when goods are imported into a town, the *darogah*, at whose *chowkee* they may pass, shall certify on the back of the *rowannah* covering them the date on which they passed; the Board are of opinion that this rule should be observed by the police *daroyahs* and *tehseeldars* in

Bundlecund, with respect to salt *rowannahs*, and desire that you will instruct the *tehseeldars* accordingly, and that you will apply to the magistrate to issue corresponding orders to the officers under his controul.

To the Acting Magistrate of Zillah Bundlecund, North Division, in reply to the above, dated the 30th June, 1820.

The Nizamut Adawlut have had before them your letter of the 16th instant, with its enclosures.

The Court are of opinion, that the rule contained in Section 22, Regulation I. 1812, does not apply to *daroghs* of police; and that the instructions, which the acting collector has called on you to issue to those in your district, would not be proper.

June 30, 1820.

To the Judge and Magistrate of Moradabad, dated the 7th July, 1820.

No. 318.
1818
Reg. XII.

The Court have had before them your letter, dated the 20th ultimo.

2. I am directed to state in reply, that the particular description of offences mentioned in the last section of Regulation XII. 1818, must still be viewed as public crimes; that it is incumbent on the land-holders, and on the police, to report them; that, where the injured party declines prosecuting, the magistrate may still, if he think fit on a view of the nature of the case, direct a public prosecution. If, therefore, those cases only go unprosecuted, which the magistrate thinks fit to pass over, it must follow, that the magistrate should be able to prevent any material injury arising to the police from private compromises.

3. As to whether a compromise between the offender and the injured party, the consideration being, on the one side, forbearing to prosecute, and, on the other, restitution of value taken, is a contract to which the civil court should give effect, I am directed to answer the questions in the negative; on the ground, that it is clearly contrary to public policy that such an encouragement to obstruct the course of criminal justice should be held out: and it is not clear, that the last section of the regulation, in giving to the injured party the discretion it has done, had in view any other motives of forbearance, than tenderness to the offender, or unwillingness to spare the time and trouble of prosecuting.

July 7, 1820.

To the Judge of the City of Benares, dated the 21st July, 1820.

No. 319.
1806.
Reg. II. Sec. II.

The Sudder Dewanny Adawlut have had before them your letter, dated the 8th instant.

2. I am directed to state, that the Court, in former instances, have held that the terms of Section 11, Regulation II. 1806, ("in confinement for satisfaction of decrees of the civil courts,") being general, the benefit of the section might be claimed by all persons in confinement under a decree, regular or summary; but not, where no sentence of the civil court, regular or summary, had issued.

July 21, 1820.

No. 320.
1819.
Reg 11. Sec. 30.

To the Judge of Zillah Nuddea, dated the 28th July, 1820.

The Sudder Dewanny Adawlut have had before them your letter, dated the 21st instant, with its enclosure.

2. The Court are of opinion, that the collector cannot, on the ground of the plaintiff being a public officer on his establishment, decline to take up the case referred to him under Section 30, Regulation II. 1819; inasmuch as the rule there laid down, that suits for the right of holding land free of assessment shall, when instituted in the *zillah* court, be referred to the collector for investigation, is general and peremptory; and the plaintiff might, if he chose, have preferred the claim in the first instance to the collector, who could not then have avoided the jurisdiction.

3. Had it been the intention that any exception to the rule should be made, as in Regulation VIII. 1794, Section 13, and Regulation V. 1812, Section 21, it appears to the Court that the same would have been expressly stated.

July 28, 1820.

No. 321.
1814.
Reg. I. Sec. 12.

To the Acting Judge of Shahabad, dated the 4th August, 1820.

The Sudder Dewanny Adawlut have had before them your letter, dated the 19th ultimo.

2. On the question proposed, viz. whether under Section 12, Regulation I. 1814, a security bond for the rent of *malguzaree* land, executed to a land-holder on behalf of his tenant, (the Government not being a contracting party,) is, or is not, within the description of instruments which are receivable in evidence though written on unstampt paper, the Court are of opinion, that such security bonds, being within the reason of the exemption provided by that section, were meant to be included in it, and may be received in evidence, without a stamp.

August 4, 1820.

No. 322.
1799
Reg. VII.
1814.
Regs. XXIII and XXIV.

To the Acting Judge of Burdwan, dated the 4th August, 1820.

The Sudder Dewanny Adawlut have had before them your letter of the 24th ultimo.

2. On the question contained in the last paragraph, I am directed to state, that the Court do not consider summary suits for rent under Regulation VII. 1799, to be referable to *sudder ameens*. The provisions of Regulations XXIII. and XXIV. 1814, which provide for civil suits being referred for trial to *sudder ameens*, intend regular suits, and the Court are not aware of any separate provision which allows summary suits to be tried by those officers.

August 4, 1820.

No. 323.
1803
Regs. XXVIII. and XXII. Sec. 2.

To the Judge and Magistrate of Moradabad, dated the 11th August, 1820.

The Sudder Dewanny Adawlut have had before them two letters from you, dated the 21st and 24th ultimo.

2. In reply to the 1st, I am directed to state, that from a decree in a summary suit for arrears of revenue under Regulation XXVIII. 1803, no appeal lies, as to the merits of the summary decree. But, in such a case, as well as in other summary suits, an appeal

would lie on the question of relevancy, that is to say, on the question, whether the lower court had tried as a summary suit, what it had no jurisdiction so to try.

3. In reply to the second of the letters acknowledged, I am directed to state, that if you deem any order of the provincial court to have been irregular, as issuing to you, regarding civil matters, from the criminal department of that court, you should make your application to the Nizamut Adawlut, through the provincial court, under Regulation XXII. 1803, in order that the provincial court's reasons and explanation of their act may come before the Nizamut Adawlut at the same time with your objections.

August 11, 1820.

To the Judge of Moradabad, dated the 11th August, 1820.

No. 324.

1814. Reg I Secs. 9 and 11.

The Court have had before them your letter of the 21st ultimo, on the subject of *hoondees* written on plain paper.

2. In reply, I am directed to state, that under Sections 9 and 11, of Regulation I. 1814, bills of exchange executed on unstampt paper, within the provinces subject to the presidency of Fort William, would not be receivable in evidence in our courts; but if they were executed without our provinces, the Regulation would not apply to them.

3. If, on a bill of exchange, written on plain paper, and purporting to have been drawn without our provinces, being produced in evidence in a suit, the party interested in its rejection allege that it was drawn within our provinces, it would be incumbent on you to inquire into the point, with a view to determine the validity of the defendant's plea. And further, if, in the course of the evidence in a suit, it should appear, that an instrument adduced, and purporting to have been executed out of our provinces, had, on the contrary, been executed within them, and on plain paper, it would be incumbent on you to treat it as an instrument which ought to have had a stamp, but had none.

August 11, 1820.

To the Dacca Provincial Court, dated the 18th August, 1820.

No. 325.

1814. Reg I. Sec 9.

The Sudder Dewanny Adawlut have had before them your senior judge's letter of the 11th instant, with its enclosure.

2. As to the case which it represents, namely, where in a separate leaf of a merchant's books an entry of a sum advanced to an individual has been made in the form of a bond by the debtor, bearing interest, and regularly signed and attested, the Court consider, that the leaf having no stamp, the writing must be treated as a bond on plain paper; and rejected *in toto*.

August 18, 1820.

No. 326.
1819
Reg VIII. Sec. 9.

To the Acting Judge of Burdwan, dated the 1st September, 1820.

The Court having had before them the petition from the Raja, which was forwarded with your letter of the 25th ultimo, and the object of which was to obtain an order from the Court that sales, under Section 9, Regulation VIII. 1819, of *putnee* tenures in the Raja's *zemindaree*, should be made by the register of Burdwan at that station, even though the tenures should be situated in other *zillahs*, I am directed to communicate to you, that as the provisions of the Regulation quoted appear to the Court to require that such sales should be made by the register of the district where the tenures are, and at the *cutcherree* of such district, the Court are not competent to give a contrary order.

September 1, 1820.

No. 327.
1803
Reg XXVIII. Sec 6
1812.
Reg. V. Sec 17

To the Acting Judge of Etawa, dated the 1st September, 1820.

The Court having had before them your letter of the 3d ultimo, I am directed to state in reply, that the rule of Section 6, Regulation XXVIII. 1803, which provides, that in cases of illegal distraint, there should be adjudged to the injured tenant restitution of the value lost to him by the distraint, and as much again as damages, is considered by the Court to be equally intended by Section 17, Regulation V. 1812; which latter rule provides, that the tenant may have his remedy by a summary suit, which was before confined to a regular one. The quantum of the remedy allowed him is not considered to be altered.

September 1, 1820.

No. 328.
1806
Reg II Sec. 11.
1814
Reg XXIII. Cl 7, Sec. 45.

To the Judge of Beerbhoom, dated the 1st September, 1820.

I am directed to state as follows, in reply to your letter of the 20th ultimo.

2. The rules of Section 11, Regulation II. 1806, for the relief of insolvent debtors, are construed by the Court to extend to all persons in confinement under decrees, regular or summary, of the civil courts, but not to those in confinement under any process where a decree of a civil court has not been given.

3. The rules of clause 7, Section 45, Regulation XXIII. 1814, make no alteration in this respect, except, that when the amount due under the decree does not exceed 64 rupees, six months is the maximum of imprisonment in satisfaction of it.

4. It does not follow, that the benefit of the insolvent rules may not be allowed within the six months under the Regulation of 1806.

September 1, 1820.

No. 329.
1819
Reg VIII Sec. 8.

To the Acting Judge of Burdwan, dated the 15th September, 1820.

The Sudder Dewanny Adawlut have had before them your letter of the 31st ultimo, and direct me to state in reply, that according to the spirit of Section 8, Regulation VIII. 1819, as the day for the presentment of petitions on the part of *zemindars* for the next half yearly sale falls in the vacation, it must be deemed commutable for the next day after the re-opening of the civil court, and the sale must not take place until a month from and after such day. It will be requisite that you should give due notice of this construction in the district under your charge.

September 15, 1820.

From the Acting Judge of Zillah Bareilly, dated the 26th September, 1820.

No. 330.

1808 Reg XXVII. Sec. 16

I beg leave to request the opinion of the Court of Sudder Dewanny as to the construction to be put on the provisions of Section 16, Regulation XXVII. of 1803, as applicable to the following case.

2. A *malgoozar* is sent to the civil jail for confinement, on account of the non-payment of an alleged balance of revenue, due for a former, as well as the current year. Denying the justice of the demand, and furnishing the security required, he is released from confinement, and immediately enters a suit against the collector to try the justice of the claim. Is such suit to be considered and investigated as summary or regular? It appears to me that the Regulation above quoted provides for all such suits being considered as the former, and particularly points out a summary process and investigation as the proper mode of procedure. But as difference of opinion seems to exist on the subject, I beg leave to refer it in the decision of the Sudder Dewanny Adawlut.

To the Acting Judge of Bareilly, in reply to the above, dated the 17th November, 1820.

In reply to your letter under date the 26th of September last, I am directed to state the Court's opinion, that in the instance you represent, the suit instituted by the alleged revenue defaulter, under Section 16, Regulation XXVII. 1803, can only be tried as a regular suit.

November 17, 1820.

Extract of a Letter from the Fourth Judge of the Bareilly Court of Appeal, dated the 15th September, 1820.

No. 331.

1803 Reg XXXIV. 1808. Reg. XIII. Sec. 11.

PAR. 4. With reference to the provisions of Regulation XIII. 1808, [Section 11,] as Mr. Robertson conceives, that they do not extend to suits instituted under Regulation XXXIV. of 1803, I beg to solicit the opinion of the Sudder Dewanny.

To the Bareilly Court of Appeal, in reply to the above, dated the 24th November, 1820.

The Court have had before them your fourth judge's letter, with enclosures, under date the 15th September last.

2. On the point proposed for the Court's opinion in the last paragraph, I am directed to state, that in summary suits under Regulation XXXIV. 1803, if an appeal take place to the provincial court, on objections against the relevancy of that Regulation to the real facts of the case, the appeal court must exercise the same power as in other appeals with regard to staying execution, and the *zillah* judge must follow the same course as in other appealed decrees.

November 21, 1820.

To the Judge of the Southern Division of Bundlecund, dated the 22d December, 1820.

No. 332.

1814 Reg XXIII. Sec. 13.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 5th instant, requesting the Court's construction of Section 13, Regulation XXIII. 1814.

2. The Court, understanding your query to be "whether, under the above section, *moonsiffs* are empowered to receive and try summary suits instituted for the recovery

of arrears of rent, provided such arrears do not exceed 64 rupees," direct me in reply to acquaint you, that they do not consider summary suits for rent to be cognizable by *moonsiffs*.

3. The provisions of Regulation XXIII. 1814, which relate to the trial of civil suits to a certain amount by *moonsiffs*, intend regular suits, and the Court are not aware of any separate provision which allows summary suits to be tried by these officers.

December 22, 1820.

No. 333.

1803. Reg XXVII. Secs. 19 and 16.

To the Judge of Zillah Cawnpore, dated the 29th December, 1820.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 7th instant, requesting the Court's constructions of two passages in Regulation XXVII. 1803.

2. In reply, I am directed to communicate to you the opinion of the Court, that the term "property," which occurs in Section 19 of the Regulation above cited, "lands or other property," must be considered to mean *real* property: of which, security given by the defaulter, and the institution of a suit by him under Section 16 to try the justness of arrears of revenue demanded of him, would prevent the sale; but not the distraint and sale of that personal property, which the collector is, under the rule contained in clause 2, Section 14 of the Regulation in question, authorized to distrain and sell.

3. The Court are not apprized in the 6th paragraph of your letter above acknowledged, what description of property (belonging to the petitioners) the collector proceeded to sequester and to sell. If personal property, under the clause last cited, the Court are of opinion, that he was authorized in so doing, and that the civil court has no right of interference.

4. If, on the other hand, the collector proceeded to the sale of the land or other *real* property of the petitioners, the Court, under the construction given to Section 19, of Regulation XXVII. 1803, are of opinion, that such proceeding was illegal; and might be legally prevented by the civil court in which the security had been given, and the suit instituted by the defaulter to try the justness of the arrears of revenue demanded. it being of course understood, that the balance [for which the collector would proceed to sell] is the same with that for which the defaulter has furnished security and instituted a suit.

December 29, 1820.

No. 334.

1817. Reg XVIII.

From the Acting Judge of Zillah Mirzapore, dated the 10th December, 1820.

I have the honor to acknowledge the receipt of your letter of the 7th ultimo, and in reply beg leave to state for the information of the Court, that a summary sentence, in strict conformity with Regulation XVIII. 1817, adjudging the particular sums recoverable from the late treasurer Rammohun Mozoomdar, has not been passed by me; although the fullest inquiry has been made, and the sums due from him have been ascertained, as stated in my letter to your address, with enclosures, dated the 20th October last.

2. I enclose copies of two *roobucarees*, dated the 24th October and 16th November last, which will show the nature of the proceedings I deemed it proper to hold in the civil court in this case. It will be observed, that on the commitment of Rammohun Mozoomdar for trial to the court of circuit, considering the sums specified in my proceedings as due from the treasurer to have been sufficiently ascertained, (for he even does not deny that these sums are due,) I proceeded to recover the amount in the manner prescribed for the execution of decrees.

3. Having however omitted to pass a summary decree in strict conformity with the Regulation, I request to be favored with the Court's instructions, whether, with reference to the proceedings already held by me, such a course is still necessary. It does not appear to me to be too late to pass a summary decree, which would have the effect to sanctioning the measures that have been adopted to recover the balance.

To the Acting Judge of Zillah Mirzapore, in reply to the above, dated the 29th December, 1820.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 18th instant, together with its enclosures, and in reply to desire, that you will now proceed, in conformity with Regulation XVIII. 1817, to hold a summary inquiry relative to the embezzlements of the late treasurer of your court, Rammohun Mozoomdar, and to pass a summary decree, (adjudging the particular sum recoverable from him,) according to the rule laid down in the Regulation above quoted.

December 29, 1820.

To the Judge of Zillah Beerbhoom, dated the 2nd February, 1821.

No. 335.
1793 Reg. X.
1799 Reg. VII. Sec. 26.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 22nd ultimo, submitting queries relative to suits in which minors and other disqualified land-holders may be parties.

2. In reply I am directed to acquaint you, that the Court do not consider it necessary to reply separately to each of the queries contained in your letter above acknowledged, but direct me to communicate their opinion generally, that the *surberahkar*, or manager, should, in all cases affecting the estate, real or personal, of the minor or disqualified land-holder, both sue and defend in the civil court, under the instructions which he may receive from the court of wards; and that, as the interests of Government cannot be ordinarily supposed to be concerned in such suits, he (the *surberahkar*) has no more right to command the aid of the government pleader, than any other individual suitor, or defendant.

3. In the case of a minor, whose estate is not under the court of wards, the executor or guardian must, during the minority, stand in the place of the minor, and be subject to all the rules of suit and defence to which the minor himself would be subject were he not a minor.

February 2, 1821.

No. 336.

1819. Reg. IX Sec. 3, Cl 1.

To the Judge of Zillah Midnapore, dated the 23rd February, 1821.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 17th instant, and under the explanation therein contained, to acquaint you, that the Court do not consider it necessary, under clause 1, Section 3, Regulation IX. 1819, that any report should be made to a provincial court of appeal by the judge of a *zillah* or city court, previously to his admission of a special appeal from the decision of a register; and consequently that he is at liberty to reject or admit an application for such special appeal, without any reference to the provincial court of appeal.

February 23, 1821.

No. 337.

1799 Reg VII. 1800 Reg V.

To the Judge of Zillah Ghazeepore, dated the 23rd February, 1821.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 9th instant, and in reply to acquaint you, that the Court have frequently determined upon former references, that the rules for distraint, under Regulation VII. 1799, [extended generally to Benares by Regulation V. 1800,] being general, must be understood to apply to the rents of lands held exempt from the public assessment, as well as to the rents of lands subject thereto.

February 23, 1821.

No. 338.

1817 Reg. XIX. Sec. 9, Cl 3 1819 Reg II. Sec 30, Cl. 7

To the Judge of Zillah Midnapore, dated the 18th May, 1821.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 10th instant.

2. In reply I am directed to communicate to you the opinion of the Court, that with reference to the value of the stampt paper, on which the appeals referred to in your letter are directed to be written by the clause and section of the Regulation cited, (clause 7, Section 30, Regulation II. 1819,) the appeals should be considered summary in as far as relates to the fees to which the pleaders employed in such suits may be entitled; but that, with reference to clause 12 of the same section, the Court consider, that the trial and decision of such causes should be regulated by the mode of procedure observed in a regular appeal.

3. Under the opinion above expressed, and with reference to the rule contained in clause 3, Section 9, Regulation XIX. 1817, it will of course be requisite that a deposit be made in the first instance for the fees of the pleaders employed in such appeal.

May 18, 1821.

No. 339.

1808 Reg. I Sec 2.

To the Judge of Zillah Ghazeepore, dated the 25th May, 1821.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 11th instant.

2. In reply, I am directed to acquaint you, that the Court, with reference to the last paragraph of the Circular Orders of the 22d July, 1813,* consider it to have been determined, that the borrower is entitled to receive possession summarily on depositing the principal

* See C. O. S. D. A. of this date, No 37, page 27, vol. I. part I. H M. P. Edition.

sum borrowed, as required by Section 2, Regulation I. 1798, leaving the interest to be settled on an adjustment of the lender's receipts and disbursements, during the period he has been in possession.

3. The case, therefore, put in your letter, of the borrower alleging the principal of the debt to have been realized from the *usufruct*, which allegation the lender in possession denies, must be the subject of a regular suit, and cannot be decided summarily.

4. If however the borrower, persisting in his allegation, deposit the principal sum, merely for the purpose of regaining possession of his lands, he may, of course, subsequently sue the mortgagee for the restitution of the amount deposited, and recover it with costs upon his proving that it really was not due.

May 25, 1821.

To the Bareilly Court of Circuit, dated the 25th May, 1821.

No. 340.

1819. Reg VII Sec. 6, Cl. 3.

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of a letter from you, dated the 11th instant.

2. In reply I am directed to communicate to you the opinion of the Court, that the rule contained in clause 3, Section 6, Regulation VII. 1819, cannot be considered applicable to European British subjects, and that consequently, under the general Regulations, an award by a magistrate, (even though a justice of the peace,) of the nature alluded to in the latter part of the first paragraph of your letter, is unauthorized and illegal.

3. You are of course at liberty to consult the Advocate General, as to how far he may consider such a decision legal under the act of parliament, to interpret which does not fall within the province of this Court.

4. It is at the same time obvious to remark, that from a conviction of a British subject by a magistrate, in his capacity of justice of the peace, under 53 George III. cap. 155, the appeal is not to a court of circuit, but to the Supreme Court in Calcutta,* 1807, Regulation IX. Section 23.

May 25, 1821.

To the Acting Judge of Zillah Jungle Mehals, dated the 1st June, 1821.

No. 341.

1814. Reg I. Sec. 11.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 23rd ultimo.

2. In reply to the first question contained in your letter, the Court have directed me to communicate to you their opinion, that a person becoming security for the payment of a bond, and affixing his name to the deed in recognition of his responsibility, is liable to be sued as a party with the principal, the transaction being as it were a joint one; and that it is not necessary to the admissibility of an action against him, that he should have entered into a regular security bond, on separate stampt paper of the same value as that of the original obligation.

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* See Construction of the 20th July, 1821, No. 345, page 142.

3. In answer to the second question, the Court have directed me to acquaint you, that they do not consider acknowledgments of partial liquidations of the amount of a bond due, of the nature contemplated in this question, (by instalments it would seem,) to be of the description alluded to in Section 11, Regulation I. 1814, and therefore that it is not necessary that each separate acknowledgment of this kind should be executed on stampt paper of the value prescribed by the Section above quoted, to render it admissible in evidence of payment.

4. In reply to the third query contained in your letter, the Court desire me to communicate to you their opinion, that they do not, in the transfer by sale, &c. of a house or other real property, consider an acknowledgment by the seller of the receipt of the purchase money to the purchaser, written on the back of the original title deeds, to be sufficient. The transaction in the case in question is evidently a distinct one between the parties concerned, and as such the Court are of opinion, that a *separate* acknowledgment should be executed on paper bearing the prescribed stamp, before it could be received in evidence in the course of a suit on the subject of such transfer.

June 1, 1821.

No. 342.

1803. Reg XXXII. Sec 6. Beng 1793 Reg XLIX. Sec. 6.

To the Acting Judge of Zillah Etawah, dated the 6th July, 1821.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, under date the 22nd ultimo, and in reply to the first question contained in that letter, to communicate to you the opinion of the Court, that under the spirit of the Circular Orders of the Sudder Dewanny Adawlut of the 25th October, 1797,* the judge may in the case supposed, [viz. in a case in which the decision of the *zillah* judge adjudging the forfeiture, at the suit of the *vakeel* of Government, of land, in consequence of an affray attended with homicide by the parties claiming possession of it,] direct the Government pleader to appeal specially, should he see adequate grounds for preferring such appeal.

2. The Circular Orders of the 27th September, 1806,† the Court observe, do not appear to be applicable to the point referred by you.

3. In answer to the second question contained in your letter, the Court direct me to acquaint you, that a report of such property as may have been adjudged forfeited to Government under the rule specified in Section 6, Regulation XXXII. 1803, should of course be made to Government for their final orders and disposal of the same.

July 6, 1821.

No. 343.

1803 Reg XXIV Secs 2 and 16. 1817. Reg VI. Sec. 2.

To the Court of Appeal for the Division of Benares, dated the 6th July, 1821.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a certificate from your senior judge, under date the 15th of May last, together with the correspondence and Persian proceedings which accompanied it.

2. In reply I am directed to acquaint you, that the Court concur in the opinion expressed by the senior member of the Board of Commissioners for the upper provinces in

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* See Cir. Ord N. A of this date, No 14, page 6, vol I B. M. P Edition.

† See Cir. Ord. S. D. A. of this date, No. 17, page 12. vol. I. part I. B. M. P. Edition.

his letter, under date the 27th April last, that claims, similar to those wished to be preferred by Mohummud Nuseer, are cognizable only by the revenue authorities, and that therefore the suit which the person above-mentioned is desirous of bringing in your court against the collector of Allahabad cannot be legally entertained by your court.

3. The Court observe, from the proceedings held by your senior judge on the 3rd April, 1821, that it is therein distinctly stated, that the pension granted to Mohummud Nuseer's father, Shah Jaroollah, was not in commutation of, or indemnification for land, so as to bring the case within the scope of the rule of Section 2, Regulation XXIV. 1803, which circumstance alone is sufficient to exclude the Court from receiving and trying such claim preferred against the Government.

4. The Court further remark, that even had Mohummud Nuseer's claim been receivable under the section of the regulation above cited, it would have been inadmissible under the explanation given to that section by Section 2, Regulation VI. 1817, which declares, that it was not thereby intended to authorize the courts of civil justice to take cognizance of claims to any pensions of the nature alluded to in that section, the original title to which had not been previously recognized and confirmed by the revenue authorities, or by Government; whereas it would appear, from the Acting Secretary's letter to the Board of Commissioners, under date the 23rd February, 1821, that, in the case in question, the claim of Mohummud Nuseer and others had been adjudged by the Board of Commissioners in the year 1808, to be inadmissible.

5. As the Government cannot in such a case be sued, so it is equally clear from the 16th Section of Regulation XXIV. 1803, that the collector cannot be liable to an action for declining to pay an unauthorized pension.

July 6, 1821.

No. 344.

1809
Reg VIII Sec 7.
1810
Reg. XVII. Sec. 7.

Extract from a Letter to the Judge and Magistrate of Zillah Moradabad, dated the 13th July, 1821.

I am directed by the Court of Sudder Dewanny Adawlut and Nizamut Adawlut to acknowledge the receipt of a letter from you, under date the 14th May last, together with the papers, Persian and English, which accompanied it.

2. In reply to the first and second queries contained in that letter, the Court direct me to communicate to you their opinion, that the provincial courts of appeal and circuit do possess the power to rescind the orders which a magistrate may have passed for the suspension of one of his public officers, pending the investigation into his conduct; but that they are at the same time of opinion, that this power should be exercised with caution and due discretion.

3. In answer to the third query contained in your letter above-mentioned, the Court instruct me to acquaint you, that the provincial court must, of course, judge whether further inquiries be necessary, previously to passing final orders on such documents as may have been forwarded on their requisition by a local officer.

4. In reply to the fourth question, the Court direct me to inform you, that they are not aware of any objections to petitions of the description alluded to being received by a provincial court, provided they be written on paper of the prescribed stamp and value

5. With regard to the 5fth question, the Court direct me to acquaint you, that the provincial courts are at liberty to adopt their own mode of communication with the ministerial officers and pleaders of a judge and magistrate's court, and to act on petitions (written as above) forwarded to them (by dawk) by such ministerial officers. The Court remark, that it can hardly be expected that a ministerial officer of the court of a judge or magistrate, by whose act he may deem himself aggrieved, should chuse *that* judge or magistrate as the channel for forwarding his petition of complaint.

6. In answer to the sixth question, I am directed to acquaint you, that, generally speaking, it is not of course consistent with propriety, that "the veracity of an official statement, "made on the responsibility of an European public functionary, should be impeached without "proof, on suspicion;" but the Court are of opinion, that such functionary should consider, whether the provincial court question *his* veracity, or the truth of the evidence upon which he is acting. In the case of Ateroollah, the Court are of opinion that the latter was intended.

1803. Reg. XXII. Sec. 2.

8. With regard to the opinion expressed in the third paragraph of your letter, the Court direct me to acquaint you, that they are of opinion, that the provincial court should have referred the doubts you entertained for the sentiments and orders of the Court, in conformity with the rule contained in Section 2, Regulation XXII. 1803.

July 18, 1821.

No. 345.

To the Barrilly Court of Circuit, dated the 20th July, 1821.

1819. Reg VII. Sec. 6.

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of a letter from you, under date the 2d instant, together with its enclosure from the magistrate of *zillah* Moradabad, dated the 27th ultimo.

2. The rule contained in clause 3, Section 6, Regulation VII. 1819, being clearly not applicable to European British subjects as defendants, and it appearing from Mr. Halhed's letter to your court, that he is in possession of a copy of my letter to your address, bearing date the 25th of May last,* the Court are not aware of the necessity of any further orders on the subject of Mr. Halhed's enclosure in your letter above acknowledged. With respect to the query occurring in the second, and at the conclusion of the third paragraph of Mr. Halhed's letter, it is obvious, that clause 4, Section 16 of the above cited Regulation cannot be acted upon at all against such masters or persons, as may not be liable to the regulation and subject to the magistrate's authority; at the same time, that against such servants as are liable and subject, the regulation may be acted upon, even in favor of those very masters who are exempted from being made defendants.

July 20, 1821.

No. 346.

Letter from the Judge of Midnapore, dated the 25th July, 1821.

1793. Regs III. IV. and XIX.

I request you will obtain the opinion of the Sudder Dewanny Adawlut on the following query, for my information.

2. Can a *zemindar* institute and maintain one and the same suit for the recovery of the revenue of land exceeding one hundred *beeghs*, held exempt from the payment of revenue, which may have been alienated by two or more grants prior to the 1st December,

* See Construction of the 25th May, 1821, No. 340, page 139.

1790; provided that each of the said grants does not exceed *one hundred beegahs*, and provided further, that the plaintiff, prior to the institution of the suit, has no means of ascertaining the exact quantity of land comprised in each of the said grants.

3. The grants alluded to are of course presumed to have been made since the 12th August, 1765, and not to have been subsequently confirmed by any competent authority.

To the Judge of Zillah Midnapore, in reply to the above, dated the 3rd August, 182[illegible].

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, under date the 25th ultimo, and in reply to acquaint you, that as the Court cannot find any provision or provisions in Regulations III. IV. and XIX. of 1793, which *prima facie* can be construed as prohibitory of the institution of such a suit as supposed in your letter, they are of opinion, that it ought to be entertained, leaving its legality and the plaintiff's right to be decided upon investigation of the facts of the case.

August 3, 1821.

Extract of a letter from the Register of the Nizamut Adawlut, to the Dacca Court of Circuit, dated the 29th March, 1822.

No. 347. 1818 Reg VIII.

6. The Court having perused the remark made by your third judge in the case of Nargassee, (No. 5, of the abstract calendar of persons detained for security, whose cases were examined by him,) are apprehensive, that Mr. Paton must be labouring under some misconception of the Court's former orders.

7. The Court entirely concur with your third judge in opinion, that the period fixed for the detention of a person from whom security is required should correspond with the period for which the surety is required to be responsible, and *vice versa*; and on reference to the instance in which your third judge states this opinion to have been over-ruled, the Court cannot discover anything at variance with the principle here laid down.

8. On that occasion it was merely ruled, that where a case is brought before a judge of circuit by petition from a security prisoner, there is no discretion to enhance the period of detention.

9. Instead of ordering an enhancement of the period of detention from six months to one year, with a view of making it correspond with the period for which security was required by your third judge, had he in the case alluded to, reduced the period for which security was required from one year to six months, with a view to the same purpose, the orders would have been perfectly legal and correct.

10. But in declaring that the terms for which the sureties are to be responsible, and for which eventual detention should be commensurate, the Court by no means intend that that principle, though obviously equitable, should operate to the prejudice of a prisoner, or that this should be construed to justify any order unauthorized by the regulations.

11. With the view of putting your third judge more fully into possession of the sentiments entertained by the Nizamut Adawlut, I am desired by the Court to forward to you the accompanying copy of a letter written by order of the Court to the Calcutta court of circuit, on the 22nd ultimo, on the subject of certain security cases revised by the fourth judge of the Calcutta court of circuit, on the conclusion of the 2nd sessions of 1821, for *zillah* Burdwan.

No. 348.

1812
Reg. V. Sec. 15
1799.
Reg. VII Sec 9.

To the Judge of Zillah Allahabad, dated the 19th April, 1822.

The Court of Sudder Dewanny Adawlut have had before them your letter, under date the 1st instant.

2. In reply to your first query, I am desired to state, that in the opinion of the Court, individuals other than the alleged defaulter or his surety, who may lay claim to distrained property, are not entitled to the release of such property on furnishing security, nor can their claims to it be investigated, according to the provisions of Section 15, Regulation V. 1812.

3. In reply to your second query, the Court direct me to acquaint you, that in the event of an alleged defaulter's property being sold from his inability to furnish security, he may have a summary action; but that any claim to such property preferred by a third person, not being the alleged defaulter or his surety, must be investigated in a regular suit, under Section 9, Regulation VII. 1799.

April 19, 1822.

No. 349.

1799
Reg XLV.
1819
Reg. VIII.

To the Judge of Zillah Midnapore, dated the 26th April, 1822.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 19th instant, requesting to be informed by whom the public sales of *putnee* and *durputnee* tenures in execution of decrees are to be conducted.

2. In reply, I am desired to communicate to you, that in the opinion of the Court such sales should be conducted by the collector.

April 26, 1822.

No. 350.

1810
Reg. XIV
Secs. 3 and 4

Minutes of the Judges, recorded the 31st September, 1822.

Under the provisions above quoted, I have lately concurred with our second judge, in mitigating punishment in the cases of a number of prisoners confined in the Allipore jail, under sentence passed on them for burglary.

2. The second judge having recently proposed to me to join him in mitigating punishment in the case of certain prisoners, sentenced as receivers of stolen property acquired by gang-robbery, I have been induced to call for the proceedings of this Court in cases where mitigation or remission has been ordered since the enactment of Regulation XIV. of 1810, and I find, that on the 18th of June, 1812, the Nizamut Adawlut applied to Government to obtain the remission of a sentence of seven years' imprisonment passed on Himmut Singh in a case of affray, in consideration of services afforded to the public by his family, and stated, that they did not consider themselves competent under the existing regulations to sanction that measure.

3. I also find in a note affixed to Mr. White's copy of Regulation XIV. 1810, that on the 3rd of September, 1812, a construction was given by the Court of Nizamut Adawlut that they considered themselves empowered, under Section 3, to grant a remission or mitigation for any cause personal to the prisoner, but not from a cause not personal.

4. As the present practice of the Court would appear to be at variance with the constructions above quoted, and as scarcely a day passes without several cases of prisoners

confined under sentence for burglary coming before us for mitigation, I beg to be favoured with the opinions of the judges, how far we are warranted in granting remission or mitigation without the sanction of Government; and if doubts exist, whether it will not be proper to have them cleared up by a special enactment.

J. T. SHAKESPEAR.

It is my opinion, that under the 3rd and 4th Sections, the Court can remit or mitigate in all cases duly before them, on sufficient ground assigned, connected also with the evidence on a review of the case. There is, I believe, a later regulation to mitigate in case of meritorious conduct, as that of Hummut.

W. LEYCESTER.

1. It is clear, that we may mitigate upon any ground that is judicial, and it is upon this construction that we remit in burglary cases, deciding that the original sentence was unduly severe.

2. A, being young and stout, is imprisoned for unaggravated burglary, under a sentence of 14 years. We think the sentence too severe by seven years, and reduce it accordingly. This is within our competence.

3. B, in the last stage of infirmity, is imprisoned under a sentence of 14 years, for an aggravated burglary, in which we cannot consider the original sentence as more than he deserved. Here we cannot touch the sentence, the ground being personal to the prisoner, and Government being the proper and sole fountain of mercy.

C. SMITH.

1. The construction of September 3rd, 1812, by Messrs. Fombelle and Burges, (if they intend, under Regulation XIV. 1810,) appears to me wrong.

2. I apprehend, that regulation gives the Court no power to exercise mercy, which is the prerogative of the Government, but to mitigate punishment on judicial reason assigned for so doing, and apparent on the record of the case, and strictly connected with the case, and not extraneous.

3. Whether the instance of a prisoner proving blind, or maimed in body, at the time sentence is to be passed on him, may be deemed a ground for mitigation, under the above regulation, may be doubted, for that is not connected with the circumstances of his case; but I am clear that if, at any time after sentence, a man become an object of compassion from bodily ailment, the Government only can interfere to pardon.

4. The cases of burglary, in which we have remitted punishment partially, were such as on the circumstances appeared to us too harshly dealt with originally. We remitted on a review of the proceedings.

W. DORIN.
W. B. MARTIN.

To the Judge of Zillah Allahabad, dated the 24th January, 1823.

No. 351.
1793.
Reg. III. Sec. 8

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 8th instant, together with its enclosed copy of a petition of plaint instituted in your court by Ramchunder Waugh, and requesting the Court's opinion as to whether the suit is

cognizable by you, "the debt having been originally incurred in Nagpore, the bond which "is the immediate ground of the present action having been executed at Allahabad, and the "defendants being at the date of the institution of the suit resident at Nagpore"

2 In reply, I am desired to acquaint you, that under the circumstances stated, the Court do not perceive any ground on which you can assume jurisdiction The cause of action, that is to say the debt, originated in a foreign territory, where the defendants still continue to reside The subsequent execution of the bond within your jurisdiction is immaterial to the present question, as that instrument cannot be termed the cause of action, being merely evidence of the debt, which is the cause of action

3. The Court are therefore of opinion, that you should not take cognizance of the suit

January 24, 1823

No 352

1817
Reg XVII Sec 7

To the Patna Court of Circuit, dated the 2nd May, 1823

The Court of Nizamut Adawlut have had before them your fourth judge's letter dated the 19th ultimo, in reply to the orders of this Court, under date the 7th of March last

2 I am desired to communicate to you for the information and guidance of your fourth judge, that the explanation furnished by him regarding the punishment of stripes inflicted upon the prisoner Sohrye is by no means satisfactory, and that in the opinion of the Court the 7th Section of Regulation XVII 1816, was merely intended (as is manifest from the wording of the doubt which the enactment was made to explain) to limit the term of imprisonment in commutation of the *deyut* to seven years, and not to authorize the infliction of stripes, which punishment the Court conceive can hardly be applicable with propriety to any case of culpable homicide

3 The Court therefore desire, that in future your fourth judge will refrain from awarding the infliction of corporal punishment in similar cases

May 2, 1823

No 353

1803
Reg LIII Sec 2, Cl 7

Extract of a Letter from the Register of the Nizamut Adawlut, addressed to the Bareilly Court of Circuit, dated the 9th May, 1823

PAR. 3 Upon the second point, the Court are of opinion, that the remark contained in the sentence of the 25th of February was correct. The regulations prescribing no specific punishment for his offence, [sodomy,] and the *futwa* of the law officers upon conviction being usually one of discretionary punishment by *tazeer*, it must be considered as falling under the rule laid down in clause 7th, Section 11, Regulation LIII 1803 The Court observe, therefore, that there is no necessity for referring such cases to this Court, unless the judge of circuit should differ in opinion with his law officer, as to the proof of the offence, or deem the punishment of 39 stripes and imprisonment with hard labour for seven years insufficient.

May 9, 1823.

To the Calcutta Court of Appeal, dated the 30th May, 1823.

No. 354.
1819
Reg. IX. Sec. 3, Cl. 1.
1814
Reg XXVI. Sec 2, Cl 6.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 24th instant, transmitting a copy of a proceeding hold by the present judge of Burdwan, and requesting the Court's opinion, as to whether, under clause 1, Section 3, Regulation IX. 1819, you are competent to authorize him to admit a special appeal, which had before been rejected by the former judge.

2. In reply, I am desired to acquaint you, that you appear to have mistaken the intent and meaning of the clause and section quoted by you; which provision was merely intended to afford a facility to an appellant desirous of preferring a special appeal to the provincial court, in obtaining the admission of such appeal, by authorizing the *zillah* judge whenever from peculiar circumstances he may deem it desirable that the further appeal should be admitted, to certify to the superior court his opinion to that effect; and that it was by no means intended to confer on the provincial court the competency to authorize an admission by the *zillah* judge in his own court of a special appeal from the judgment of an inferior court, when under the general regulations such appeal is inadmissible.

3. Under the circumstances of the case submitted by you, it appearing that the former judge rejected the petition of special appeal preferred after two decisions. I am desired to acquaint you, that his order must, by clause 6, Section 2, Regulation XXVI. 1814, be considered final, and that no special appeal can now be admitted.

May 30, 1823.

To the Judge of Zillah Allahabad, dated the 26th September, 1823.

No. 355.
1821
Reg. II. sec. 12.

The Court of Sudder Dewanny Adawlut have had before them your letter, under date the 2nd instant, soliciting the opinion of this Court, as to whether an appeal from an order passed by a register fixed at any other than the *sudder* station, in a case of execution of a *moonsiff's* decree, taken up and decided by him under the authority vested in him by Section 12, Regulation II. 1821, is to be made to the judge, in the same manner as if the case had been referred to him by the latter, under clause 2, Section 7, or whether it must be made to the court of appeal; and also whether the special appeal from an order passed by such register, in appeal from a *sudder ameen* in a case of the kind referred to him for execution by the latter, under the section first alluded to, is to be made to the judge or court of appeal.

2. In reply, I am desired to communicate to you the opinion of the Court, that in both cases the appeal lies to the judge, and not to the court of appeal.

September 26, 1823.

To the Judge of Zillah Moradabad, dated the 24th October, 1823.

No. 356.
1814
Reg. XXIV Sec 9, Cl. 6.
1817.
Reg XIX. Sec. 2.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 10th ultimo, requesting the opinion of the Court, as to whether a register having the additional powers specified in Regulation XXIV. 1814, is authorized to try suits to an amount exceeding 5,000 rupees, and also, whether a register exercising the additional powers above specified, is authorized to try cases in appeal from the decision of the collector or assistant collector.

2. In reply to your first query, I am desired to communicate to you the opinion of the Court, that agreeably to the spirit and intent of clause 6, Section 9, Regulation XXIV. 1814, a register specially empowered under that clause is authorized to try and decide any suits referred to him by a judge, whether instituted under the provisions of Section 2, Regulation XIX. 1817, or under the rules previously existing.

3. With reference to your second query, I am desired to state, that you have not been sufficiently specific, and to direct, that you will name the description of decisions passed by a collector, (quoting the particular regulations under which they are passed,) regarding which you request the opinion of the Court, as to whether or not they are cognizable by a register especially empowered.

October 24, 1823.

No. 357. 1807 Reg IX. Sec. 22.

Extract of a Letter from the third Judge of the Dacca Court of Circuit on the termination of the first sessions of 1823 *for Dacca Jelalpore, dated the* 1*st August*, 1823.

PAR. 9. In the firm persuasion that such a system and the general derangement of authority could not have been long maintained, as they appear to have been, unless encouraged and promoted by the supineness of the late acting magistrate, I enjoined his successor Mr. Turquand to select and submit to me such cases, or *nuthees*, wherein the decisions passed by the former officer might justify revision, by directing the arrangement of the parties, if practicable by their apprehension, before a more competent tribunal, and he accordingly sent me 51 cases; 38 of which have been returned, some, on account of the circumstances therein recorded being irrelative to the object proposed; others, as being of too distant a date, and affording from want of proof no rational hope of being brought to a successful issue; many, as being of too trifling a nature, perhaps inadvertently transmitted, and the rest, either from the complaints appearing *prima facie* to be false, or from the judgments being appropriate. In seven I recorded my opinion for the immediate adoption of measures for further investigation, and the eventual commitment of the accused, which has been confirmed by the Court. But exception having been offered by it to the opinions I also recorded on the remaining six, on the ground of the assumed incompetency of the circuit judge, under Sections 22 and 23, Regulation IX. 1807, to disturb by revision the decisions passed by the magistrate anterior to his circuit, the calendars of which had been presented to a preceding judge, and against which no petitions had now been preferred, I submit the cases for the consideration of the Nizamut Adawlut.

Extract of a letter from the Register of the Court of Nizamut Adawlut submitting the above letter to the Chief Secretary to Government, dated the 31*st October*, 1823.

PART OF PAR. 31. On the subject of the six cases referred to, in the 9th paragraph of Mr. Mitford's letter, I am desired to observe, that they will be returned with the opinion of the Court, that Mr. Mitford was competent to investigate them, but that final orders should be passed by the court of circuit collectively; the fact of the calendars having been presented to a preceding judge under Section 22, Regulation IX. 1807, not being sufficient to deprive him of such authority.

October 31, 1823.

To the Bareilly Court of Circuit, dated the 7th November, 1823.

No 358

1818 Reg XII Sec 3, Cl 4.

The Court of Nizamut Adawlut have had before them your letter, dated the 4th ultimo, forwarding the explanation of the magistrate of Agra, in the case of Nundun Singh, called for by the Court's orders of the 22nd of August last

2. In reply I am desired to acquaint you, for the information and guidance of the magistrate, to whom you are requested to make the requisite communication, that in the opinion of the Court, in cases of theft, a magistrate is not competent to pass sentence of imprisonment exceeding six months, unless the theft should have been attended by one or more of the six aggravating circumstances enumerated in clause 4, Section 3, Regulation XII 1818.

3 As no one of the aggravating circumstances enumerated in clause 4 appear to have existed in the case of Nundun Singh, you are requested to revise the magistrate's sentence, and provide for the liberation of the prisoner after six months imprisonment.

November 7, 1823.

To the several Courts of Appeal in the Western and Lower Provinces, dated the 19th December, 1823

No 359

1793 Reg XV Sec 6 1803 Reg XXXIV Sec 5

The Court of Sudder Dewanny Adawlut having reason to believe, that a variance of opinion exists among the different courts as to the intent and meaning of the provision contained in Section 6, Regulation XV 1793, and the corresponding provision in Section 5, Regulation XXXIV 1803, I am desired to call your attention to the precedent established in the cause Musst Mukhun appellant, *versus* Mohunt Rampersaud, respondent, decided on the 13th of July 1808, by two judges of the Sudder Dewanny Adawlut, (page 172 of the printed civil reports,*) and at the same time to acquaint you, that the Court at large have resolved to adhere to the construction contained in that decision, namely, that the restriction contained in the section above quoted, against a judgment for interest exceeding the amount of the principal, when the legal interest shall have accumulated so as to exceed the principal, is not applicable when the accumulation is subsequent to the institution of a suit, and therefore not ascribable to procrastination on the part of the creditor

2 You will be pleased to furnish the several judges within your division with a copy of this letter for their information and guidance.

December 19, 1823.

To the Dacca Court of Circuit, dated the 26th December, 1823

No 360

1814 Reg XV Sec 2, Cl 1

The Court of Nizamut Adawlut have had before them a letter from your fourth judge, dated the 17th instant, requesting to be informed whether, in the opinion of the Court of Nizamut Adawlut, a sentence of *tushheer*, in addition to fourteen years imprisonment, can be carried into execution against a prisoner convicted of three offences, on three separate commitments, for the whole of which your fourth judge is of opinion, that the maximum of imprisonment within the competence of the courts of circuit, limited by clause 1, Section 2, Regulation XV 1814, of fourteen years in the aggregate is sufficient, but for one of

* Page 242, Vol I of the Bishop's College Press Edition

which offences, [subornation of perjury,] he deems the prisoner deserving of the further penalty of *tushkeer*.

2. In reply, I am desired to communicate to you the opinion of the Court, that under the circumstances stated, the additional penalty of *tushkeer* cannot legally be awarded against the prisoner; that mode of punishment not being mentioned in the regulation above cited.

3. You will be pleased to inform your fourth judge accordingly, directing him at the same time to make the necessary alteration in the sentence.

December 26, 1823.

No. 361.

To the Calcutta Court of Circuit, dated the 26th March, 1824.

1817. Reg XVII. Sec 11.

The Court of Nizamut Adawlut have had before them a letter from your third judge, under date the 20th instant, submitting copies of certain proceedings held in the case of Ramdhun Mokerjea and Muddun Chatterjea, and requesting the opinion of the Court, as to whether, under the circumstances therein mentioned, the magistrate of Burdwan was authorized in refusing to release the said prisoners, when directed to do so by your third judge.

2. In reply I am desired to communicate to you the opinion of the Court, that your third judge was fully competent to order the immediate release of the prisoners, as they had been acquitted of uttering the forged note, knowing it to be forged; and the having a forged bank note in possession, (which appears to be the plea assigned by the magistrate for the detention of the individuals in question,) is not declared to be a punishable offence by Regulation XVII. 1807, or any other regulation in force.

3. The Court direct, therefore, that you order the immediate release of the said prisoners, communicating the above remarks to the magistrate for his information and future guidance.

March 26, 1824.

No. 362.

To the Calcutta Court of Circuit, dated the 26th March, 1824.

1817. Reg XVII. Sec. 11

The Court of Nizamut Adawlut have had before them a letter from your third judge, under date the 20th instant, submitting copies of certain proceedings held in the case of a prisoner named Pearee Osar, who was tried and acquitted by him at the late Burdwan sessions, on a charge of uttering counterfeit coin with an intent to defraud the prosecutor; and requesting the opinion of the Court, as to whether a magistrate, having committed a prisoner for trial for a specific offence, is authorized, after the acquittal of that prisoner by the court of circuit, to revise the proceedings and to punish him for a minor offence; the magistrate having, in the instance referred to, sentenced the prisoner to a fine for having counterfeit coin in his possession, and having detained the prisoner in confinement, under such sentence, in pursuance of Section 11, Regulation XVII. 1817.

2. In reply, I am directed by the Court to inform you, that supposing the trial before the court of circuit to have included an investigation of the point expressly provided for in the section above mentioned, viz. the prisoner having counterfeit coin in his possession, and not shewing good and sufficient cause for the same, (which the Court of Nizamut

Adawlut conclude must have formed part of the trial on the charge of uttering such counterfeit coin with an intent to defraud,) the magistrate was not, in the judgment of the Nizamut Adawlut, warranted by the regulation above mentioned in sentencing the prisoner to a fine on the proceedings held before his commitment, and detaining him in confinement under such sentence, after he had been acquitted by the court of circuit, and a warrant had been issued for his release.

3. You will be pleased therefore to order the magistrate of Burdwan to release the prisoner Pearee Osar without delay, and to communicate to him the foregoing remarks for his information and future guidance.

March 26, 1824.

To the Patna Court of Appeal, dated the 9th April, 1824.

No. 363.
1793 Reg XLVII. Sec 2. 1814. Reg XXV. Sec 9

The Court of Sudder Dewanny Adawlut have had before them your letter, under date the 1st instant, requesting the Court's opinion as to the proper mode of disposing of two special appeals, regarding which your first and second judges differ, and in the trial of which your third and fourth judges are incapacitated from sitting, they having formerly decided the cases in their respective capacities of judge and register of *zillah* Tirhoot.

2. In reply, I am directed to acquaint you, that the casting voice conferred by Section 2, Regulation XLVII. 1793, having been taken away by Section 9, Regulation XXV. 1814, and no new rule enacted by which to give the senior judge a casting voice, it is essential, that he should concur with some one of the other judges. The decision in both cases must necessarily be postponed, until some other judge joins your court.

3. The same course, the Court observe, must be adopted in the case to which you allude, in the second paragraph of your letter, viz. supposing all the four judges of your court to be of different opinions.

April 9, 1824.

To the Judge and Magistrate of Southern Division of Bundlecund, dated the 23rd April, 1824.

No. 364.
1803. Reg XXVII. Sec. 39.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 4th instant, requesting to be informed, whether the provisions of Section 39, Regulation XXVII. 1803, which relate to cases of a collector's omission or refusal to obey an order or decree of a court of judicature, were meant to extend to proceedings issued from the magistrate's court.

2. In reply, I am desired to communicate to you the opinion of the Court, that the rule above quoted, considered with its context and the general provisions of the regulation referred to, was intended to be restricted in its operation to decrees and orders of a civil court of judicature; and that it is not applicable to the proceedings of a magistrate.*

April 23, 1824.

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* This principle was recognized also in a letter to the acting judge of Moradabad, dated the 17th of March, 1826, No. 414, page 174, par 3.

No. 365.

1817.
Reg. XVII Sec. 8, Cl. 4.

To the several Courts of Circuit, in the Western and Lower Provinces, dated the 7th May, 1824.

I am directed by the Court of Nizamut Adawlut to transmit for your information and future guidance, an extract (paragraph 6) from the resolutions of the Court of this date, relative to the crime of administering poisonous drugs to persons, with a view to robbing them when in a state of insensibility.

2. I am further directed by the Court to observe, that under their construction of the fourth clause of Section 8, Regulation XVII. 1817, as applicable to such cases, it will be necessary to refer, for the final sentence of the Nizamut Adawlut, all trials in which the prisoner may be convicted of the offence in question, whether death may ensue or otherwise.

Extract from the Remarks and Orders of the Court of Nizamut Adawlut, under date the 7th May, 1824, *on the Chief Secretary to Government's letter of the 6th November last, forwarding the Report of the Superintendent of Police in the Western Provinces, for the year* 1822, *and the resolutions of Government thereon.*

PAR. 6. The Court regret to observe, that the crime of administering poisonous drugs to travellers and other persons, with the view of robbing them when in a state of insensibility, appears to be increasing both in the lower and western provinces. They do not, however, consider that any further enactment is necessary for the punishment of persons guilty of this atrocious crime; as in the event of death ensuing, the offender would on conviction be liable to the punishment of wilful murder; and when death may not ensue, as life is endangered by administering poisonous drugs, in order to cause insensibility, such cases appear to come within the provisions of the fourth clause of Section 8, Regulation XVII. 1817, relative to cases of robbery and theft, or the attempt to commit such, when accompanied with an attempt to commit murder, or with corporal injury in such degree as to endanger life. In all such cases the trial is referrible to the Nizamut Adawlut, and the offenders who may be convicted to the satisfaction of this Court, are liable to a sentence of 39 lashes with a *corah* and imprisonment and transportation for life.

May 7, 1824.

No. 366.

1824.
Reg IV.

To the Judge of Zillah Bhaugulpore, dated the 25th June, 1824.

I am directed by the Court of Sudder Dewanny Adawlut, to acknowledge the receipt of your letter of the 14th instant, and its enclosures, requesting to know whether Mr. W. B. Jackson, the officiating 2nd register of your court, is authorized to register deeds while officiating as collector of the district, or whether he must be re-appointed to act in that capacity, under the provisions of Regulation IV. 1824.

2. As Mr. Jackson has been already appointed to officiate as register of deeds, the Court do not think it necessary that you should re-appoint him to officiate in the capacity, whilst acting as collector, under the regulation above-mentioned.

June 25, 1824.

To the Judge of Zillah Moradabad, dated the 2nd July, 1824. No. 367.

1803
Reg. VII. Sec. 39, Cl. 3.

I am directed by the Court of Sudder Dewanny and Nizamut Adawlut to acknowledge the receipt of your letter of the 11th ultimo, requesting the Court's opinion, as to whether the civil court is competent to receive a suit for actual costs against a plaintiff whose complaint had been dismissed in a criminal court.

2. In reply, I am directed to inform you, that the Court are of opinion, that the civil courts are not authorized to take cognizance of such suits, as clause 3, Section 29, Regulation VII. 1803, authorizes the criminal courts to adjudge a reimbursement of costs actually incurred upon a prosecution before them by either of the parties thereto, if they shall consider such reimbursement just and equitable.

3. The Court however are of opinion, that if a magistrate, from oversight, have omitted to order a reimbursement of costs to the party whom he may think justly entitled thereto, he is at liberty to supply the omission by a subsequent order, upon application from the party for that purpose.

July 2, 1824.

To the Judge of Zillah Allahabad, dated the 2nd September, 1824. No. 368.

1813.
Reg VI.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 19th ultimo, requesting to know whether it is allowable, during the vacation, to take cognizance in the *dewanny* Court of cases transferred from the *foujdaree* under Regulation VI. 1813.

2. In reply, I am directed by the Court to inform you, that you cannot take up the cases in question under the regulations as they at present stand. A regulation has however been passed, and will speedily be published, for enabling the magistrates to take summary cognizance of cases of forcible dispossession from or disturbance in the possession of land or other property, subject to a regular suit in the civil court.*

September 2, 1824.

Extract from a letter to the Bareilly Court of Appeal, dated the 21st September, 1824. No. 369.

1803.
Reg IV Sec. 12, Cl. 6.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from your senior judge, dated 21st ultimo, in reply to my letter of the 23rd July last, regarding his rejection of a petition of appeal, without first having called on the petitioner to shew cause why he did not furnish security for costs; and also containing his observations regarding the cases of Zorawur Singh.

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* This Regulation was subsequently enacted as Regulation XV. of 1824.

2. With regard to the question submitted by your senior judge, "whether, under "the sixth clause of Section 12, Regulation IV. of 1803, a superior court is bound to "receive a petition of appeal from the decision of an inferior court in any regular suit, "when the petitioner, though not a pauper, omits to file along with it security for the "costs of other party," the Court are of opinion that although no appeal can be admitted before the security for costs be filed; yet the superior Courts are competent, (and such is the practice of this Court,) provided good and sufficient reason be shewn why the security was not filed with the petition, to receive the petition, and to allow the petitioner sufficient time to furnish the security; which course of proceeding appears to have been adopted by your late fourth judge in the cause of Mukundram.

September 21, 1824.

No. 370.
1800
Reg. XVII

Extract from a letter to the Judge of Zillah Furruckabad, dated the 21*st September*, 1824.

3. The Court observe, that the spirit and intention of Regulation XVII. of 1806, appear applicable to every description of real property, as well as to landed estates.

September 21, 1824.

No. 371.
1824.
Reg XV Sec 3.
1814
Reg. XXVII.
Sec. 17.

To the Magistrate of Zillah Allahabad, dated the 26*th November*, 1824.

The Court of Nizamut Adawlut have had before them your letter, dated the 12th instant, requesting the Court's opinion on certain questions connected with the provisions of Section 3, Regulation XV. 1824.

2. In reply, I am directed to communicate to you the opinion of the Court, that the term "*vakeel*," made use of in the section above quoted, should not be construed to mean only the authorized pleaders attached to the civil courts of judicature, (who, however, may act, under the provisions of Section 17, Regulation XXVII. 1814,) but that it should be held to extend to all agents of the parties duly appointed to act as their *vakeels*; and that in every case, whatever persons may be so employed, the amount of their fees should be adjusted between them and their constituents, as in other *fouydaree* cases.

November 26, 1824.

No. 372.
1800.
Reg. II Sec. 11.

To the several Provincial, Zillah, and City Courts, &c., dated the 31*st December*, 1824.

Doubts having been entertained whether the provisions for the relief of insolvent debtors, contained in Regulation II. 1806, should be considered applicable to the cases of persons in confinement for arrears of rent, I am desired to acquaint you, that, in the opinion of the Court, the rules contained in Section 11, Regulation II. 1806, extend to all persons in confinement under decrees, regular or summary, of the civil courts; but not to

those in confinement under any process in cases wherein the decree of a civil court has not been passed.

2. You are accordingly desired to adopt this construction in future, whatever construction may have been heretofore given in your court to the section in question.

December 31, 1824.

To the Acting Magistrate of Zillah Beerbhoom, dated the 21st January, 1825. No. 373.

1797. Reg XIV. Sec. 8.

The Court of Nizamut Adawlut have had before them your letter, dated the 11th instant, requesting to be informed, how the costs in criminal cases, alluded to in Section 8, Regulation XIV. 1797, are to be levied.

2. In reply, I am desired to acquaint you that in no case, wherein the Government is not one of the parties, can reimbursement of the costs be made from the treasury of the court; but that they should be levied from the failing party, in like manner as costs adjudged in civil suits.

January 21, 1825.

To the Officiating Magistrate of Cuttack, dated the 21st January, 1825. No. 374.

1818. Reg XII Sec. 2, Cl 2.

The Court of Nizamut Adawlut have had before them your letter, dated the 13th instant, requesting to be informed if it is considered that an individual convicted of burglary, being *chokredar* of a different village from that in which the burglary is committed, should make no change in the order of the magistrate for commitment.

2. In reply, I am desired to communicate to you the opinion of the Court, that although the fact of the property stolen being under the special protection of the thief, is unquestionably an additional aggravation, yet under the terms used in clause 2, Section 2, Regulation XII. 1818, any person charged with having committed the offence of burglary, while employed in the office of watchman, guard, or police officer, and against whom there may appear to be sufficient evidence, must be committed to take his trial before the court of circuit.

January 21, 1825.

To the Dacca Court of Appeal, dated the 4th February, 1825. No. 375.

1806 Reg. II Sec. 3. 1793. Reg IV. Sec. 11

The Court of Sudder Dewanny Adawlut have had before them a letter from the officiating judge of *zillah* Sylhet, dated the 17th ultimo, forwarding a copy of his correspondence with your court, relative to the practice of defendants in regular civil suits filing their answers, at any stage of the proceedings antecedent to final decisions.

2. On the subject of that reference, I am desired to acquaint you, that the Court are not prepared to adopt to its full extent the principle laid down in your letter to the address of Mr. Turquand, dated the 13th ultimo, namely, that "a defendant in a regular civil suit "is *entitled* to file his answer to the plaint at any stage of the trial antecedent to final "decision, although the enquiry may have been commenced *ex parte*." On the contrary, under a strict construction of the rule contained in Section 3, Regulation II. 1806, the cause should be proceeded on *ex parte*, notwithstanding the defendant's subsequent

appearance, if he do not appear, either in person or by *vakeel*, within the time limited in the proclamation prescribed by Section 11, Regulation IV. 1793.

3. The Court however are of opinion, that consistently with the spirit of the rule above quoted, whenever a defendant appears, at any time antecedent to the decision of the suit, and assigns satisfactory reasons, to show that the default was not wilful, he should be permitted to file his answer, notwithstanding the commencement of an *ex parte* investigation; and to adduce evidence in support of it, if the merits of the case appear to require it.

4. You will be pleased to forward a copy of this letter to the officiating judge of Sylhet, for his information and future guidance.

February 4, 1825.

To the Judge of Zillah Meerut, dated the 8th April, 1825.

No. 376.
1814
Reg XXVI
Sec. 12, Cl. 3.

The Court of Sudder Dewanny Adawlut have had before them your letter of the 9th ultimo, suggesting the expediency of the fines levied in cash under the third clause of Section 12, Regulation XXVI. of 1814, being paid into the court, by the persons fined presenting a petition on stampt paper equal to the amount of the fine.

2. I am directed by the Court to inform you, that they are not aware of any necessity for the adoption of the measure proposed by you, as a little precaution would, they conceive, be sufficient to prevent irregularity or fraud in crediting the fine referred to, and your proposition could not be adopted without a new regulation; which, however, you are at liberty to propose in the prescribed form, if you think it expedient.

April 8, 1825.

To the Agent to the Governor General, Moorshedabad, dated the 8th April, 1825.

No. 377.
1812
Reg. IV.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, under date the 31st ultimo, requesting to know if a suit can be instituted in the manner prescribed by Regulation IV. 1812, in favour of His Highness the Nuwab Nizam.

2. In reply, I am directed to inform you, that under the provisions of the regulation adverted to, the solution of your question depends upon whether Government consider His Highness the Nizam in the light of a sovereign prince or not, and that you should therefore apply direct to Government for information on that point.

April 8, 1825.

To the Magistrate of Zillah Rungpore, dated the 8th April, 1825.

No. 378.
1824
Reg XI, Sec. 5.

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of your letter of the 23rd ultimo, requesting the Court's opinion, with regard to Section 5, Regulation XV. of 1824; there being no rule laid down for the guidance of magistrates, in the event of the crops sown by the illegal possessor being uncut.

2. In reply, I am directed by the Court to inform you, that the provisions of the regulation adverted to, which prohibit a magistrate to award damages for loss of crops, or injuries sustained from dispossession, do not preclude him from restoring a party wrong-

fully dispossessed, to the possession of land with the crop upon it, although the latter may have been sown by the wrongful dispossessor, as in the case stated by you. The Court however do not exactly understand the object of your reference, and therefore direct me to add, that if you require a more specific opinion, you should state the case more circumstantially for their information.

April 8, 1825.

Extract from a letter to the Benares Court of Circuit, dated the 8th April, 1825.

No. 379.
1818
Reg XII Sec 2, Cl. 2.

PAR. 3. With reference to the sentence passed on Sheodeen, *alias* Neerunjun, (No. 38 of the statement,) who was punished for burglary and theft by your third judge, the Court observe that there were other individuals implicated in the same case, whose offence was taken final cognizance of by the magistrate, when he committed the prisoner above-named to take his trial before the court of circuit on the ground of his having been convicted of a former robbery.

4. This course of proceeding, the Court remark, is at variance with the spirit of the rule contained in clause 2, Section 2, Regulation XII. 1818, and is otherwise objectionable, as involving the possible consequence of conflicting judgments being passed by different tribunals in one and the same case.

5. You are requested therefore to instruct the magistrate of Gorackpore to commit in future the whole of the offenders implicated in the same case to take their trial before the court of circuit, whenever the commitment of any one of the number may be requisite under the regulations.

April 8, 1825.

To the Judge of Zillah Tirhoot, dated the 15th April, 1825.

No. 380.
1810.
Reg VIII. Secs 18 and 19
1799
Reg. VII. Sec. 15, Cl 4.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 25th ultimo, requesting the opinion of the Court, as to whether the explanation of Section 15, Regulation VII. 1799, as given in the latter sections of Regulation VIII. 1819, extends beyond Bengal; and whether a written engagement is necessary to enable a person to sue under Regulation VII. 1799.

2. In reply to your first query, I am desired to refer you to Section 22, Regulation VII. 1822, by which Sections 18 and 19, Regulation VIII. 1819, are extended to all the provinces immediately subject to the presidency of Fort William.

3. In reply to your second query, I am directed to state, that the Court do not hold the existence of a *cabooleat*, or written engagement on the part of the *ryot*, to be essentially required to enable the landholder to institute a summary suit against him under Regulation VII. of 1799; but that, on the contrary, the courts are competent to decree such arrears as may be proved to be *bonâ-fide* and equitably due by an examination of the vouchers and accounts of the parties, as prescribed by clause 4, Section 15, Regulation VII. 1799.

April 15, 1825.

No. 381.

1817.
Reg XX. Sec. 16, Cl. 17.

To the Magistrate of Southern Division of Bundlecund, dated the 22nd April, 1825.

The Court of Nizamut Adawlut have had before them your letter, under date the 8th instant, requesting to be informed whether the provisions of clause 17, Section 16, Regulation XX. 1817, are applicable to the recovery by a police officer of *treasure* plundered by robbers.

2. In reply, I am desired to acquaint you, that the provisions of the rule above quoted are applicable to the cases of police officers who may recover treasure; but that its operation does not extend to other individuals not being police officers. Commission cannot be awarded to such persons to be deducted from the property recovered, although they may of course receive a reward for any eminent service rendered to the police; the necessary sanction for such reward having been previously obtained by the magistrate from the proper authority.

April 22, 1825.

No. 382.

1799.
Reg. VII Sec. 15, Cl 8.
1807.
Reg. IX. Sec. 23.

To the Acting Magistrate of Zillah Rajeshahye, dated the 22nd April, 1825.

The Court of Nizamut Adawlut have had before them your letter, dated the 1st instant, stating a difference of opinion between yourself and the collector, as to the construction of clause 8, Section 15, Regulation VII. 1799, and as to the degree of power which a landholder possesses, under that section, in compelling a *ryot's* attendance.

2. The Court have also received from the Board of Revenue a copy of the correspondence consequent upon, and a detail of the circumstances which gave rise to, the difference of opinion above alluded to, which were submitted for the consideration of that authority by Mr. Pringle.

3. In reply to your communication, I am desired to observe, that it is extremely difficult for the Court to define exactly and generally what degree of power it was intended by the use of the term "compulsion" in the regulation to confer on the landholders, in enforcing the attendance of their tenants. In the event of a complaint being preferred to you of the abuse of that power, you will decide from the evidence whether any unnecessary and unauthorized degree of severity has been exercised or not: and your decision, whatever it may be, will be open, as in other cases, to revision by the court of circuit under Section 23, Regulation IX. 1807.

Regarding the prohibition against the issue of general proclamations.

4. I am further directed to acquaint you, that the Court deem the proclamation issued by you, and bearing date the 15th of January last, to be extremely injudicious, and they desire that you will recall it immediately on the receipt of this letter.

5. For your future guidance, I am desired to call your attention to the Court's circular letter, under date the 16th of August, 1822, prescribing the line of conduct to be pursued by the several magistrates on the occasion of their deeming it necessary to issue a proclamation on any subject.

April 22, 1825.

No. 383.

1814
Reg. XXV. Sec. 12, Cl. 2.

To the Dacca Court of Circuit, dated the 29th April, 1825.

The Court of Nizamut Adawlut have had before them a letter from your fourth judge, dated the 16th instant, submitting for the decision of this Court a difference of opinion

between himself and the acting magistrate of Sylhet, together with a copy of the proceedings out of which it originated.

2. In reply, I am desired to communicate to you, for the information and guidance of your fourth judge, the opinion of the Court, that a single judge of circuit, under the existing regulations, is not competent to suspend the execution of a magistrate's sentence, until the court of circuit collectively record their judgment.

April 29, 1825.

To the Acting Magistrate of Zillah Sylhet, dated the 29th April, 1825.

No. 384. 1819. Reg. VII. Sec. 5.

The Court of Nizamut Adawlut have had before them your letter, under date the 16th instant, requesting to be informed, whether the second punishment directed by Section 5, Regulation VII. 1819, in cases of workmen neglecting to finish their work, should be considered final and conclusive, or whether the magistrate is at liberty to repeat such punishment until the work is performed.

2. In reply, I am desired to communicate to you the opinion of the Court, that the sentence of two months' imprisonment, prescribed in the section above quoted, is intended as a punishment for wilful neglect to perform work undertaken, and not as a means of compelling the performance of it; consequently that the magistrates are not competent to repeat the punishment of two months' imprisonment, or to take any further measure towards compelling an actual performance of the work engaged for.

April 29, 1825.

To the Magistrate of Zillah Jessore, dated the 29th April, 1825.

No. 385. 1823 Reg. VI. Sec. 5

The Court of Nizamut Adawlut have had before them your letter, dated the 20th instant, requesting to know whether, in case of a *ryot* entering into an engagement with an indigo planter for cultivation of a particular spot of ground, and afterwards wishing to evade the fulfilment of that engagement, the planter is justified by Regulation VI. of 1823, in compelling the *ryot* to fulfil his contract? or is he (the planter) to prosecute him for the penalty which is specified in the *cabooleat*?

2. In reply, I am desired to communicate to you the opinion of the Court, that an indigo planter, under the circumstances above stated, is not competent to cultivate the land by means of his own servants, nor has he a right to demand the assistance of the police for the purpose of compelling the *ryot* to fulfil his contract. His only legal remedy in such case is that prescribed by Section 5, Regulation VI. 1823, to the provisions of which I am desired to refer you.

April 29, 1825.

To the Judge of the Southern Division of Zillah Bundlecund, dated the 27th May, 1825.

No. 386. 1803 Reg XXVII. Sec. 21.

I am desired by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter, dated the 3rd instant, soliciting the opinion of the Court, as to whether it is intended that stampt paper should be used in causes tried by the *zillah* courts, under Section 23, Regulation XXVII. of 1803; and if so, whether the courts are to be guided, in the value of the stampt paper, by the amount of the arrears of revenue due by the defaulter,

or by the amount of the annual produce of the estate, for the confiscation of which the collector sues.

2. In reply, I am desired to communicate to you the opinion of the Court, that in the cases in question stamps should be used; the value of which should be calculated according to the amount of the annual *jumma* of the estate, for the confiscation of which the collector sues.

May 27, 1825.

No. 387.

Power of a single judge of circuit to fine the treasurer of a magistrate's court without reference to the magistrate.

To the Bareilly Court of Circuit, dated the 27th May, 1825.

The Court of Nizamut Adawlut have had before them a letter from your officiating judge, Mr. Cracroft, dated the 8th instant, annexing a copy of his correspondence with the magistrate of Agra, and requesting the opinion of the Court, as to whether or not he was competent to fine the treasurer of the magistrate's court, without reference to that officer.

2. In reply, I am desired to acquaint you, that the Court are of opinion, that Mr. Cracroft was not competent to proceed to this measure of his own authority, and that he should have referred the case, in the first instance, to the magistrate for decision; reserving to himself the power of bringing the case under the cognizance of his colleagues for correction, in the event of his seeing reason to be dissatisfied with the mode in which the magistrate had disposed of it.

3. You will be pleased to furnish the magistrate of Agra and your officiating judge with copies of this letter, for their information and guidance.

May 27, 1825.

No. 388.

1824. Reg I. Sec 12. 1797. Reg. XIV Sec. 3. 1807. Reg. IX. Sec. 19.

To the Joint Magistrate of Noacolly, dated the 3rd June, 1825.

The Court of Nizamut Adawlut have had before them your letter, dated the 26th ultimo, requesting to know what process should be observed for the realization of the fine, under Section 12, Regulation I. 1824, on persons illicitly cultivating salt *churs*.

2. In reply, I am desired to acquaint you, that the regulation above quoted being silent as to the mode in which the fine is to be levied; the Court are of opinion, that it should be commuted to imprisonment under the rule contained in Section 3, Regulation XIV. 1797, and Section 19, Regulation IX. 1807, whenever the party on whom the fine may be imposed shall neglect to pay it.

June 3, 1825.

No. 389.

1793. Reg X. Sec. 5.

To the Magistrate of Zillah Rungpore, dated the 3rd June, 1825.

The Court of Nizamut Adawlut have had before them your letter, dated the 19th ultimo, requesting the opinion of the Court on the following points:

1st. On a person being charged with heinous offences, such as are only punishable by the circuit judge, and the fact established by two or more witnesses; is it the duty of a magistrate to make over the accused for trial before the circuit judge, without further investigation, or ought he to hear witnesses for the defence?

2nd. If witnesses for the defence be summoned, and prove an *alibi*, is the magistrate at liberty to acquit the accused, when by the evidence for the prosecution he is proved guilty?

2. In reply, I am desired to acquaint you, that in the cases subject to the jurisdiction of the court of circuit alone, a magistrate is not at liberty to enter into any evidence for the defence; that being within the province of the court of circuit exclusively.*

June 3, 1825.

Extract from a letter to the Benares Court of Circuit, dated the 10th June, 1825.

No. 390.
1796 Reg X. 1818 Reg VIII.

The Court of Nizamut Adawlut have had before them a letter from your third judge, under date the 14th ultimo, submitting the original proceedings, and copies of the English correspondence of your court, and of the magistrate of Ghazeepore, in the case of a person named Dhujjoo Singh, who is detained in jail under a requisition to furnish security.

2. The Court observe, that Mr. Rattray has submitted four questions for the decision of the Court; namely,

1st. Whether a person sentenced to imprisonment by a magistrate, in failure of furnishing a specific security required by that magistrate, has an appeal to the *sudder* court of the province collectively? or whether he must remain in jail till a single member of the same court, perhaps half a year or more afterwards, visits the station, and determines that he shall remain there: or that, in justice, he never should have been, where he has been, under an unwarrantable detention, so long without redress?

2dly. Whether a petition presented at the *sudder* court of the province, and admitted by two judges of that court, whose orders are passed and recorded upon it, each in conformity with the other, should not be considered, as far as the authority of the court extends, as finally disposed of?

3dly. If the magistrate protests against a compliance with these orders, and desires it, a reference to the Nizamut Adawlut may follow, unless the two judges, whose orders he disputes, revise, and modify or rescind them? but it may so happen, that one of these two judges is then no longer a member of the court; in that case, is the other, *of himself* competent to revise his own, and his late colleague's proceedings, and confirm or cancel both, on his own sole opinion? or in the event of a revisal becoming necessary (by a protest from the executive authority, as in the present instance), should not *another* member of the court take the place of the departed one, and decide the point which, had the latter been present, he would have aided in determining?

4thly. Is a single judge on circuit competent to interfere with an order passed antecedently at the *sudder* station by two members of his own court, himself being one of the two? or would the magistrate be justified in obeying the order issued by him singly, which he [the magistrate] had already protested against when issued by him conjointly with another equal authority?

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* Superseded by the provisions of Regulation VIII. 1829.

3. In reply to the first question, I am desired to communicate to you the opinion of the Court, that, under the existing regulations, a person sentenced to imprisonment by a magistrate, in failure of furnishing specific security required by the magistrate, has not an appeal to the *sudder* court of the province collectively, and that the cognizance of his case rests solely with the individual judges of circuit who may visit the station at which he is confined.

4. In reply to the second question, the Court observe, that, under the above construction of the powers of the court of circuit, a petition for a revision of a magistrate's order of security having been taken up, and orders passed upon the same by two judges at the *sudder* station, should not be considered as finally disposed of; such orders being contrary to the regulations, and null and void.

5. On the third question, I am directed to state, that a magistrate is of course competent, under Regulation X. 1796, to require a reference to this Court, in any case wherein he may deem an order passed by you (whether individually or collectively) to be repugnant to the regulations; and that generally speaking, where it may become necessary to repeat an order passed by two judges, of whom one had departed since the order was passed originally, and where two voices are requisite, the remaining judge should be joined by one of his colleagues; but that at the same time, the other members of the court are clearly at liberty to abstain from passing any order on, or interfering in any manner with a case, where they may be of opinion, that the cognizance of it was erroneously assumed by one or more of their colleagues.

6. It is only necessary in answer to the fourth question to state, that any single judge of circuit, having concurred in passing an illegal order, is not thereby incapacitated from passing a subsequent order in every respect conformable to the regulations, and in opposition to the former one, which was never carried into effect by reason of the magistrate's objection on the score of its illegality, and the order for the execution of which was never repeated.

7. The Court desire me to request, that, in communicating their opinion to your third judge on the above points, you will also acquaint him, that they do not deem it expedient to recommend any alteration in the rules relative to security, as suggested by him in the concluding paragraph of his letter.

9. The original proceedings in the case of Dhujjoo Singh are herewith returned, and the Court desire, that Mr. Rattray, who appears to have taken up the case as a judge of circuit at the *zillah* station, will immediately pass such order thereon as may to him appear just, and at the same time be within his competence under Regulation VIII. 1818.*

June 10, 1825.

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* This construction has been superseded by a subsequent one of the 31st of August, 1827, No. 458, page 193, at least so much of it as regards an appeal by a security prisoner to the judges at the *sudder* station.

To the Benares Court of Circuit, dated the 10th June, 1825.

No. 391.
1818.
Reg. XII. Sec. 3.

The Court of Nizamut Adawlut have had before them a letter from your officiating judge, dated the 17th ultimo, submitting the copy of a correspondence which has passed between himself and the acting magistrate of Goruckpore, on a difference of opinion subsisting between them, together with the original proceedings out of which that difference arose.

2. In reply, I am desired to acquaint you, that the points at issue between them, as stated by the acting magistrate, do not appear to be exactly the same as those stated by your officiating judge. By the latter officer they are stated as follows :

3. *First.* Whether in a case of theft by a servant of his master's property, the amount or value of which may be above 50, but not exceed 300, Rupees, and unattended with personal violence or other circumstance of aggravation, such as to bring the case within the first clause of Section 3, Regulation XII. 1818, the magistrate be *competent* to pass a final sentence to the extent of the powers vested in him by clause 4 of the same section.

Secondly. Supposing the magistrate to be so competent, whether he is bound to dispose of the case ; or if he deem it proper to commit the accused for trial before the court of circuit, under the discretion given in the last mentioned clause, whether it is not incumbent on him to state the special grounds on which he exercises such discretion, and which induce him to think the accused deserving a more severe punishment than he is declared competent to adjudge.

Thirdly. Supposing the judge of circuit holding the session to be of opinion, that the case is within the magistrate's competency, and no special grounds are assigned in the *roobukaree* of commitment, or shown on the proceedings to justify the commitment, or induce the inference that the magistrate considers the punishment which he can award insufficient, whether, under such circumstances, the judge of circuit is competent to return the proceedings without trial, and to instruct the magistrate to dispose of the case.

4. On the first question as above put, the Court are of opinion, that a magistrate is competent under the circumstances stated to punish an offender on his own authority, to the extent specified in clause 4 of the section quoted.

5. On the second question, that a magistrate is not bound to dispose of a case under such circumstances, but that he may commit the offenders to take their trial before the court of circuit, under the second clause of the section quoted, should *any* peculiar circumstances in the case induce him to consider this course of proceeding preferable ; and that it is incumbent on a magistrate to state in his *roobukaree* of commitment, the circumstance which induced him to commit the case, in conformity to the instructions contained in the 3d paragraph of the court's circular order, dated the 1st September, 1820.

6. On the third question, that a judge of circuit is not competent, under the circumstances therein stated, to return the proceedings without trial, and to instruct the magistrate to dispose of the case ; but that he should call upon the magistrate to supply the omission, and in the event of insufficient ground for commitment being shewn, he should, nevertheless, proceed to decide the case, contenting himself with recording, in his final proceeding or otherwise, a caution to the magistrate against making unnecessary

commitments in future, and not exceeding (if the prisoner be convicted) that measure of punishment which it would have been competent to the magistrate to award, had he himself disposed of the case.

7. The Court observe, that the questions of the magistrate merely went as to his own competency to commit, and the judge of circuit's competency to return without trial, a case under the circumstances above detailed, and these points have been already replied to.

8. You will be pleased to furnish your officiating judge, and the acting magistrate of Goruckpore, with copies of this letter, for their information and future guidance.

June 10, 1825.

No. 392.
1810
Reg XX.
Secs. 15, 16, and 17.

To the Acting Magistrate of Zillah Ghazeepore, dated the 10*th June*, 1825.

The Court of Nizamut Adawlut have had before them your letter, under date the 31st ultimo, requesting the Court's opinion on the following queries:

1. In the event of a boat fastened to a spot of ground within the limits of a cantonment being attacked and robbed, which boat at the time was not aground, but floating, and the depredators coming from the cantonment lands, is the case cognizable by the civil magistrate, or by the military authorities?

2nd. If a boat fastened with ropes, chains, &c. to a spot of land within the limits of a cantonment, but floating, be attacked from the river side by boats or by wading, &c. is the case cognizable by the civil or military authorities?

3rd. If a boat, when tracking up the river, and its dandies within the limits of cantonment, and pulling on the "*goon*," (or tracking rope,) should be attacked, and the *goon* or tracking rope cut by persons within the limits of a cantonment, and injury sustained, is the case cognizable by civil or military authorities?

2. In reply, I am desired to refer you to the rules contained in the 15th, 16th, and 17*th* Sections of Regulation XX. 1810, by which you will perceive, that the military authority extends only to cases of petty offences committed within the limits of a cantonment by a person being a retainer of the army, or the servant of an officer, or registered as attached to the *bazar*; and the more grave offences, such as those mentioned in your queries, are cognizable by the magistrate exclusively, by whomsoever perpetrated, whether committed within or without the limits of a cantonment.

June 10, 1825.

No. 393.
1824
Reg. XV Sec. 5.

Extract from a letter to the Patna Court of Circuit, dated the 17*th June*, 1825.

The Court of Nizamut Adawlut have had before them your letter, dated the 31st ultimo, submitting in compliance with request of the magistrate of *zillah* Behar, for the consideration and orders of this Court, under Section 2, Regulation X. 1796, the proceedings in the case of Ramadheen Singh *versus* Bodhee and others.

2. In reply, I am desired to communicate to you the opinion of the Court, that the magistrate clearly exceeded his powers in awarding possession to a purchaser of mortgaged property to the exclusion of the mortgagee, under the provisions of Regulation XV. of

1824, on the plea that the mortgage had been redeemed, although the purchaser, up to the date of the dispute which led to the summary award, had never been in possession.

3. The Court therefore entirely concur with you in opinion, that the regulation above quoted did not apply to the case, which was properly cognizable in your court on appeal on the ground of irrelevancy.

5. In conclusion, I am directed to observe, that Section 5, Regulation XV. 1824, expressly prohibits summary awards of damages in cases tried under that regulation, but that, on this point you should submit the draft of a modifying enactment, in the event of your considering the rule in question objectionable.

June 17, 1825.

To the Magistrate of Zillah Rungpore, dated the 17th June, 1825.

No. 394.

1799 Reg VII. Sec. 15, Cl. 8.

The Court of Nizamut Adawlut have had before them your letter, dated the 4th instant, requesting to be informed, whether indigo planters have the power of summoning and compelling the attendance of *ryots*, as the *zemindars* and other landholders have, under clause 8, Section 15, Regulation VII. 1799.

2. In reply, I am desired to communicate to you the opinion of the Court, that indigo planters, not being *zemindars* or landholders, have no power to summon *ryots* and compel their attendance.

June 17, 1825.

To the Benares Court of Appeal, dated the 24th June, 1825.

No. 395.

1793 Reg XVI. Sec. 5.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 3rd instant, requesting their opinion as to the necessity or otherwise of the whole, or a majority merely, of the members associated in cases referred to arbitration coinciding in the decision returned by them; and stating the difficulty which occurs in many cases before your court, where no umpire has been named, and the arbitrators are divided among themselves.

2. In reply, I am desired to acquaint you, that whenever a suit shall be submitted to arbitration, the court in which it may have been instituted is required, previous to the arbitrator or arbitrators entering upon the arbitration, to cause the parties to agree to some one of the provisions detailed in Section 5, Regulation XVI. 1793, for completing the award, in the event of the arbitrators not delivering it by the limited time, either from disagreement or other cause; and that, where these preliminary engagements may not have been specified in the bond and the arbitrators may not be unanimous in their decision, their proceedings must of course be considered void and of no effect, and the case must be tried *de novo*; but I am desired to observe, that no difficulty can occur where the precautionary measures prescribed by the regulation, as to the conditions of the bond, have been duly executed.

June 24, 1825.

No. 396.
1824
Reg. XV.

To the Magistrate of the City of Patna, dated the 22nd July, 1825.

The Court of Nizamut Adawlut have had before them your letter, dated the 25th ultimo, submitting your observations on the mode of investigating cases instituted under the provisions of Regulation XV. 1824, and enclosing a copy of a form used by you in taking the depositions of the parties in such cases.

2. In reply, I am desired to acquaint you, that the Court are by no means satisfied of the utility of the form in question, or of the expediency of instituting a formal and separate preliminary investigation to determine the question of relevancy, as recommended by you; being of opinion, that the point of relevancy or otherwise is best established by the evidence adduced to prove the complaint of dispossession, and that it is competent to every judicial authority, (whether the jurisdiction be original or appellate,) to be guided by such means of forming a judgment on this point as may be deemed by them most satisfactory.

July 22, 1825.

No. 397.
1803.
Reg XIX. Sec. 3.

To the Bareilly Courts of Appeal and Circuit, dated the 29th July, 1825.

The Courts of Sudder Dewanny Adawlut and Nizamut Adawlut have had before them your letter, dated the 7th instant, with its enclosure from the judge and magistrate of Bareilly, requesting the opinion of the Court as to whether a person named Dubois, who was born at Chandernagore of European parents, should be considered an European, and consequently subject to the prohibition contained in Section 3, Regulation XIX. 1803.

2. In reply, I am desired to communicate to you the opinion of the Court, that the parents of the individual above-named having been Europeans, the place of his birth is immaterial; and that he should therefore be considered an European.

July 29, 1825.

No. 398.
1800.
Reg. I. Sec 1.

To the Acting Judge of Zillah Sylhet, dated the 5th August, 1825.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 25th ultimo, requesting to be informed, whether a minor can execute a power of attorney to a constituted *vakeel* of the court to defend a suit instituted against the minor's father in his life time, or whether the suit must remain for investigation until the minority of the boy expires.

2. By Section 1, Regulation I. of 1800, it is provided, that whenever any objections to conferring the trust on the next of kin may exist, the judge shall nominate some other person of character and respectability to act as guardian of the minor. But in the case out of which your reference originated, it appears, that the minor has no relation whatever under which circumstances, the Court are of opinion, that the provisions of the rule above quoted might, by analogy, be extended to his case, and that you should select some competent person to act as his guardian.

3. You will be pleased therefore to make a selection of some individual accordingly, attending to the rules laid down in Regulation I. of 1800; and the person so appointed by you will be competent to nominate a *vakeel* to conduct the defence of his ward.

August 5, 1825.

To the Commissioner of Rungpore, dated the 12th August, 1825.

No. 399.

1825.
Reg. III. Sec. 3.

The Court of Nizamut Adawlut have had before them your letter, dated the 28th ultimo, requesting the Court's opinion, in respect to the nature of the instrument which is to be considered as constituting a person *armed*, under the provisions of Section 3, Regulation III. 1825; also whether the provisions of the above regulation apply to a gang of more than two persons, but of whom less than that number may have been armed.

2. In reply to your first question, I am desired to communicate to you the opinion of the Court, that clubs and sharpened bamboos should be considered as arms, within the meaning of the regulation; and, in reply to your second question, that under the provision above quoted, the case is necessarily referrible to the Nizamut Adawlut, where the gang is proved to have consisted of two or more persons, any one individual of whom may have been armed.

August 12, 1825.

To the Judge of Zillah Dinagepore, dated the 12th August, 1825.

No. 400.

1814
Reg. XXIII
Secs. 19 and 29.
1821
Reg. II. Sec. 4.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 22nd ultimo, noticing certain malpractices by the *moonsiffs* of your court, in employing *peons* to levy illegal sums on subpœnas, *et cætera;* and requesting the Court's opinion as to whether the *moonsiffs* are competent to try suits for rents of land alleged to be due, or for the value of crops, trees, and fruits.

2. On the first point, I am desired to observe, that it should be your duty to see, that in causing notices to be served, the *moonsiffs* adhere to the existing regulations, by allowing the plaintiff to serve the notice himself, or through any other person whom he may choose to employ for that purpose, and that the remuneration of persons so employed be perfectly voluntary; taking care to punish any violation of his duty in this particular on the part of a *moonsiff*.

3. You appear to be of opinion, that the employment of established *peons* in serving the notices from the *moonsiff's cutcherrer*, and the fixing certain rates of allowance to be received by such *peons*, would be desirable. On this point I am desired to observe, that you are at liberty, should you think the existing rules are objectionable, or that better ones can be substituted, to submit your sentiments in the draft of a regulation through the proper channel, agreeably to the provisions contained in Regulation XX. 1793.

4. On the other point, namely, the competency of the *moonsiffs* to try suit for rents of land, or for the value of crops, trees, and fruit, I am desired to call your attention to Section 4, Regulation II. 1821, the provisions of which you seem to have overlooked, and which expressly authorize the trial of suits for rent by the *moonsiffs*. With respect to suits for the other descriptions of property noticed by you, I am directed to observe, that if the suit be instituted *bonâ fide* for the value of crops, trees, or fruit, or other description of personal property detached from, and involving no question of right as to real property, it is cognizable by the *moonsiffs*, but not otherwise.

August 12, 1825.

No. 401.

1820 Reg IV.

To the Magistrate of Zillah 24-Pergunnahs, dated the 18th August, 1825.

The Court of Nizamut Adawlut have had before them your letter of yesterday's date, submitting copies of letters which have been forwarded to you by Major General Dalzell, commanding the Presidency Division, and soliciting the instructions of the Court as to the line of conduct to be pursued by you towards a native named Gooroo Pershaud Banerjea, who, it appears, was sent to you by the Major General for the purpose of being dealt with according to law; he having refused to take the oath required of him before a court martial.

2. In reply, I am desired to communicate to you the opinion of the Court, that Regulation IV. 1820, not being applicable to the case of a witness refusing to be sworn before a court martial, and there being no other regulation that bears any relation to the subject, you should decline receiving the person sent, upon the ground that the requisition of General Dalzell cannot be regarded as a sufficient warrant for his detention.

August 18, 1825.

No. 402.

1825. Reg XII. Sec. 4.

To the Bareilly Court of Circuit, dated the 24th August, 1825.

I am desired by the Court of Nizamut Adawlut to forward to you the accompanying copy of a letter from the acting magistrate of Moradabad, on the subject of inflicting corporal punishment, under the provisions of Regulation XII. of 1825.

2. You are requested to inform Mr. Okeden, in reply, that he should consider the infliction of the *corah* as prohibited from the promulgation of that enactment, that is, from the date of its receipt in his office: and consequently, that in executing sentences in which the punishment of the *corah* may have been awarded, he should substitute an equal number of strokes of the ratan, the new regulation not authorising any additional number in consequence of the latter instrument of punishment having been substituted for the former.

August 24, 1825.

No. 403.

1817 Reg XVII. Sec 6, Cl. 3.

To the Commissioner of Zillah Rungpore, dated the 24th August, 1825.

The Court of Nizamut Adawlut have had before them your letter, dated the 2nd instant, requesting to be informed, whether it is considered proper to accept of a *razeenama* in the case of a committal for rape, the woman being married, and both she and her husband being desirous of withdrawing the complaint.

2. In reply, I am desired to communicate to you the opinion of the Court, that a *razeenama* is not admissible in such cases, and that if the woman, on whom the violence may have been committed, and her husband refuse to prosecute, the pleader of Government should be appointed to conduct the prosecution, the offence of rape being described in clause 3, Section 6, Regulation XVII. 1817, as a heinous crime.

August 24, 1825.

To the Bareilly Court of Circuit, dated the 26th August, 1825.

No. 404.
1807.
Reg. IX. Sec. 3.

The Court of Nizamut Adawlut have had before them your letter, dated the 29th ultimo, submitting for the Court's consideration and orders, the copy of a correspondence between the magistrate of *zillah* Bareilly and the officiating magistrate of Moradabad, relative to a difference of opinion which has occurred between those officers, as to whether one magistrate can apprehend in the jurisdiction of another, any person or persons charged with criminal offences committed beyond the limits of his own jurisdiction. I am desired also to take this opportunity of acknowledging two other letters from you on the same subject, dated respectively the 2nd and 12th instant, together with their several enclosures.

2. I am desired to acquaint you, that the Court concur with you in opinion, that a magistrate has not the power of apprehending any person or persons charged with criminal offences committed beyond the limits of his own district, and not actually being or residing within the district of such apprehending magistrate at the time of a complaint being preferred.

3. You are requested to acquaint the magistrate of Bareilly, that in his letter to your address, dated the 26th ultimo, he has erred in citing the Regulations of 1793 and 1795, which are not applicable to the districts of Bareilly and Moradabad.

4. It is competent to your court to determine as to the propriety or otherwise of furnishing Mr. Okeden with a copy of Mr. Dick's letter, dated the 26th ultimo; but I am desired to add, that in the opinion of this Court there is no apparent necessity for your doing so.

5. You will be pleased to furnish those gentlemen with such parts of this communication as affect them respectively.

August 26, 1825.

To the Second Judge of the Calcutta Court of Circuit, Burdwan, dated the 5th September, 1825.

No. 405.
1824
Reg. X.

The Court of Nizamut Adawlut have had before them your letter, dated the 25th ultimo, stating the particulars of a case of abortion, and requesting to be informed whether, in holding out an offer of pardon, you are restricted to one individual of the number committed in the above-mentioned case, or whether you are authorized to offer pardon to any number of persons with the view of obtaining their collective evidence on the trial; requesting also the opinion of the Court, as to what should be considered a proper interval to be given to those to whom the offer might be tendered by the magistrate, previous to their being again called up to signify their determination; and whether in the event of any of them availing themselves of it, their depositions should, in the first instance, be taken before yourself.

2. In reply to your first question, I am desired to state, that in tendering an offer of pardon, you are not restricted to one individual. In reply to your second question, that generally speaking, four and twenty hours may be considered as a proper interval to be granted to the persons to whom the offer has been tendered, before they are called on for their determination: and in reply to your third question, that the deposition of the prisoners

by whom the offer may be accepted should, in the first instance, be taken before the magistrate in the presence of those whom it may affect

September 5, 1825

No 406
1814
Reg XXVI
Sec 12 Cl 1
1806
Reg II Sec 3

To the Calcutta Court of Appeal, dated the 7th October, 1825

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 24th ultimo, submitting copies of a letter from the judge of Zillah Burdwan and of its enclosure from the acting register of that district, relative to a difference of opinion, which has arisen between those two officers on certain points connected with the suit of Ram dulal Bundopa, appellant, *versus* Ramdulal Mudduck, respondent.

2 The question at issue is stated by the judge as follows "Is it competent to a court to dismiss a case on default on the first hearing after a party in it may have appeared to answer for a default, which he was called upon to do by the circular order of the Sudder Dewanny Adawlut, dated 5th November, 1812, without his being allowed the benefit of the notice prescribed in clause 1, Section 12, Regulation XXVI 1814?"

3 In reply to this question, I am desired to state, that it is clearly competent to a court to dismiss a case on default on the first hearing, after the notice prescribed by this Court's circular order, dated the 5th of November, 1812 provided, (as is stated by the acting register to have been the case in the present instance,) the defaulting party be not able to show reasonable cause for the default and that it is not necessary in such case to issue the notice prescribed in clause 1, Section 12, Regulation XXVI 1814, that notice, as justly remarked by the acting register, not being intended to call on the parties to file their pleadings but that they should be prepared to file their exhibits, and name their witnesses to prove what they have set forth in their pleadings Had the defaulting party shewed reasonable cause, and on that ground been admitted to plead, he, after pleading, of course becomes entitled to the notice of eight days, which the above-cited rule prescribes.

4 The points on which the acting register solicits the opinion of the Court, as stated in the 8th and 9th paragraphs of his letter, are as follows In cases decided *ex parte*, under Section 3, Regulation II of 1806, is it necessary that the notice prescribed by Section 12, Regulation XXVI of 1814, should have been given, to render that decision legal? If a plaintiff in an original suit defaults at any stage of the proceedings previous to the completion of the pleadings, and neglect to proceed, although called upon by the notice required by the circular order of the Sudder Dewanny Adawlut, dated 5th November, 1812, is it necessary that the notice prescribed by Section 12, Regulation XXVI of 1814, should be given previous to passing an order of dismissal?

5 In reply to those questions, I am desired to observe, that the notice above alluded to is not requisite in the latter of the cases stated, but is requisite in the former to the plaintiff whom the circumstance of the case being tried *ex parte* does not exempt from the necessity of proving his suit, and who, of course therefore, is entitled to due notice before he is compelled to exhibit his proof

6 I am directed to add, that the Court, who have not had the full proceedings before them, do not mean to interfere at all in the particular case to which this correspondence

relates: the respondent, if dissatisfied with the judge's order for restoring the suit to the file, is of course at liberty to appeal against it to your court.

7. You are requested to furnish the judge of Burdwan, and the acting register, with a copy of these opinions for their information and guidance.

October 7, 1825.

To the Judge and Magistrate, Southern Division of Bundlekhund, dated the 11th November, 1825.

No. 407.
1825
Reg VIII. Sec. 2

I am desired by the Courts of Sudder Dewanny and Nizamut Adawlut to acknowledge the receipt of your letter, under date the 25th ultimo, requesting to be informed, whether the provisions of Section 2, Regulation VIII. 1825, are meant to be applicable to individuals usually attendant in every court, civil and criminal, under the designation of *omedwars*, who are neither directly nor indirectly private servants of the judge and magistrate.

2. In reply, I am desired to acquaint you, that the prohibition contained in the regulation above quoted extends to all individuals not being duly constituted officers of the court, and that the latter description of persons alone can legally be employed in the transaction of any official duties. The enactment, in question, however, need not, in the opinion of the Court, be construed to preclude persons other than the regularly appointed officers of the courts from taking copies of public documents, with the sanction of the judge and magistrate, for the use of private individuals, at the expense of those who may employ them.

3. Should you deem the provisions of Regulation VIII. 1825, under the construction now given, to be objectionable, you are of course at liberty to submit through the prescribed channel, and with due observance of the provisions of Regulations I. and IX. of 1803, any proposed modification of them, which in your opinion may be expedient and proper.

November 11, 1825.

To the Acting Register and Joint Magistrate of Futtehpore, dated the 2nd December, 1825.

No. 408.
1814
Reg XXVI.
Sec 16, Cl. 4.
1824
Reg. XVI.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 14th ultimo, requesting their opinion as to whether, under the provisions of Regulation XXVI. 1814, you are permitted to allow unauthenticated copies of proceedings and papers to be taken from your office on plain paper.

2. In reply, I am desired to acquaint you, that as clause 4, Section 16, Regulation XXVI. 1814, (which authorises individuals to make, with the permission of the courts, copies of papers for their private use, and at their own expense, on any paper which they may prefer) has not been rescinded by the provisions of Regulation XVI. 1824, you are at liberty to permit the continuance of the same practice.

December 2, 1825.

No. 409.

1814.
Reg I. Sec. 11
Cir Or, 8 D. A
20 April, 1818.

To the Judge of Zillah Etawah, dated the 2nd December, 1825.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 12th ultimo, together with its enclosures, bringing to the Court's notice, a practice which has prevailed in your court, of calculating the value of stamps upon the principal only of a suit without interest, and representing the loss to which Government has been subjected by the practice in question.

2. In reply, I am desired to acquaint you, that you are perfectly correct in your construction of the Court's circular order, bearing date the 20th of April, 1818, which had no reference whatever to the value of the stamp paper for plaint, to be used in suits instituted for the recovery of money, principal and interest; and consequently that the Persian proceeding of your predecessor, dated the 7th of July, 1818, was clearly founded on a misapprehension of the order above quoted, which misapprehension you will of course take the requisite measures to remove,

3. With reference to the suggestion contained in the fourth paragraph of your letter, namely, that letters from this office should be accompanied by a Persian translation for the use of the *omlah*, I am directed to observe, that the Court do not deem that measure to be either necessary or expedient.

December 2, 1825.

No. 410.

1814
Reg. II Sec. 3,
Cl. I.

To the Judge of Zillah Dacca Jelalpore, dated the 16th December, 1825.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 10th instant, requesting to be informed, whether you are competent to entertain a suit instituted by a minor and his guardian, against the collector, for having, under the authority of the court of wards, disposed of the minor's estate.

2. In reply, I am desired to acquaint you, that the Court are not aware of any regulation which debars a minor, under these circumstances, from the same rights and privileges with respect to the mode of seeking redress from an alleged grievance, as are enjoyed by the community generally; and that in the Court's opinion he is, with his guardian, fully competent to institute a suit of the nature alluded to.

3. It will of course be the duty of the judge, to whom the petition of plaint is preferred, to forward the same under the first clause of Section 3, Regulation II. 1814, for the consideration of the Board of Revenue, and to proceed to the trial of the suit under the fourth clause of the above section, in the event of its not being deemed requisite by that authority and direct redress should be afforded.

December 16, 1825.

No. 411.

1816
Regs XXII.

To the Acting Magistrate of Zillah Rajeshahye, dated the 23rd December, 1825.

The Court of Nizamut Adawlut have had before them your letter, under date the 14th instant, requesting their opinion as to whether British subjects are or are not, liable to assessment under the provisions of Regulation XXII. 1816.

2. In reply, I am desired to acquaint you, that as Regulations IX. and XVI. of 1814, (extending the provisions of Regulations XIII. 1813, and III. 1814, to all and every person and persons whomsoever, British subjects and others,) have been rescinded, and not re-enacted by Regulation XXII. 1816, the Court are of opinion, that the rules relative to the *chokeedaree* assessment are not applicable to European British subjects.*

December 23, 1825.

To the Moorshedabad Court of Appeal, dated the 27th January, 1826.

No. 412. 1824. Reg. XVI. 1814. Reg. I. Sec. 11.

The Court of Sudder Dewanny Adawlut have had before them your officiating judge's letter, dated the 23d instant, requesting the Court's construction of two points of Regulation XVI. 1824.

2. In reply to his first question, I am desired to communicate to you the opinion of the Court, that in the case of powers of attorney, filed previous to the promulgation of the regulation referred to, copies thereof should be written on stamp paper of the value used for the original instrument, under the regulations in force at the time such original instrument was executed.

3. The Court are at a loss to furnish you with a satisfactory reply to the second question, as there does not appear to be any rule extant by which the value of security bonds for a specific amount should be determined; Section 11, Regulation I. 1814, having been rescinded by Section 3, Regulation XVI. 1824, and being the only rule which was applicable to the case.†

4. A copy of your officiating judge's letter, and of this reply, will be submitted to Government for such orders as may be deemed necessary on the subject.‡

January 27, 1826.

To the Moorshedabad Court of Appeal, dated the 3rd March, 1826.

No. 413. 1814. Reg. XXVI. Sec. 8, Cl. 7 to 10.

The Court of Sudder Dewanny Adawlut have had before them your officiating judge's letter, dated the 20th ultimo, with its Persian enclosure, stating that it has been the practice of your court, in calculating the periods limited for admitting regular appeals preferred direct to the court, not to allow the deduction of the interval, between a party furnishing the prescribed stamp paper in the *zillah* court, and the copy of the decree being tendered or delivered to him, as prescribed by clauses 7, 8, 9, 10, Section 8, Regulation XXVI. 1814; and stating also his opinion, that it was decidedly intended by clause 10 to provide for the deduction in question.

2. In reply, I am desired to observe, that the Court entirely concur with your officiating judge in the construction which he has adopted, and that the deduction in question should be considered applicable to all, regular as well as summary and special, appeals.

March 3, 1826.

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* The Government concurred in this construction, but being of opinion, that Europeans should be assessed, desired the Court to introduce a rule to that effect in some future enactment; but a convenient opportunity has not subsequently presented itself. Letter from Sec. to Govt. Judicial Dept. dated 19th January, 1826.

† See Construction, 22nd September, 1826, No. 431, page 181.

‡ Provided for by Regulation X. 1829. See Schedule A, Article 8, and Schedule B, Article 1.

No. 414.

1824.
Reg. XV. 1813.
Reg VI. Sec. 5. Cl. 3.

To the Acting Magistrate of Zillah Moradabad, dated the 17th March, 1826.

I am desired by the Court of Nizamut Adawlut to acknowledge the receipt of your letter, dated the 28th of January last, with its English and Persian enclosures, requesting the instructions of the Court, as to the mode of proceeding you should adopt for the purpose of securing the execution of certain orders issued by you to the collector of the district.

2. With reference to case marked A, I am directed to observe, that the original order issued from your court to the *tehsildar*, to hold the estate therein alluded to under attachment, was irregular. The authority indeed to cause an attachment at all is not expressly recognized by Regulation XV. 1824, to vest in the criminal courts, but it may be presumed to exist with analogy to the rule contained in clause 3, Section 5, Regulation VI. 1813.* In all such cases, however, the attachment of the disputed lands should be made directly by the court before whom the matter is depending, without the intervention of the collector.

A magistrate not empowered to fine a collector for disobeying his orders.

3. Under this view of the case, therefore, the fine imposed by you on the collector, even admitting it to be otherwise legal, could not be upheld; but, on the general question, I am desired to acquaint you, that the Court are not aware of any regulation to authorize a magistrate's having recourse to the measure of fining a collector, and that the measure is of a nature which nothing short of a positive and explicit enactment could warrant.†

1804
Reg. III. Sec. 4, Cl. 4

4. With reference to the second case marked B, the Court remark, that your order to the collector to retain in attachment the estate of the parties accused, after they had appeared to answer the charge against them, was altogether illegal, and contrary to the rule contained in clause 4, Section 4, Regulation III. 1804, which prescribes, that the attachment be removed immediately on the attendance of a party whose property may have been attached on the ground of his absence, provided he attend within the period mentioned in clause 5, as the absentees in the case in question appear to have done.

March 17, 1826.

No. 415.

1824.
Reg XV 1821.
Reg II. Sec 5.

To the Magistrate of Zillah Allahabad, dated the 14th April, 1826.

The Court of Nizamut Adawlut have had before them your letter, dated the 27th ultimo, requesting to be informed, whether cases pending in the criminal court, under Regulation XV. 1824, may be referred for trial to a *sudder ameen*, vested with special powers, under Section 5, Regulation II. 1821.

2. In reply, I am desired to communicate to you the opinion of the Court, that cases of the nature specified are not properly cognizable by the officers in question.

April 14, 1826.

No. 416.

1824.
Reg XVI.

Extract from a letter to the Secretary to Government in the Judicial Department, dated the 14th April, 1826.

I am desired by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter, dated the 6th instant, together with its enclosed copy of a letter from the

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* This part of the construction has been virtually superseded by the construction dated the 4th September 1829, as far as regards the competency of a commissioner of circuit to attach, or to direct the collector to attach

† See No. 364, page 151.

judge of *zillah* Meerut, requesting information as to whether the rules contained in Regulation XVI. 1824, relative to *mokhtarnamahs*, should be considered applicable to those documents filed in the courts of the *moonsiffs*.

2. In reply, I am directed to communicate to you the opinion of the Court, that it never could have been intended to subject *mokhtarnamahs* filed in the courts of the *moonsiffs* to the heavy stamp duty, prescribed by the regulation above quoted.

April 14, 1826.

To the Moorshedabad Court of Appeal, dated the 28th April, 1826.

No. 417.
1814
Reg XXVII.
Sec. 21.
1793.
Reg. VII Sec. 8.

The Court of Sudder Dewanny Adawlut have had before them your officiating judge's letter, dated the 16th ultimo, enclosing copies of two petitions from Kasheepershaud Rai, of your court's proceedings, and of a correspondence between your court and the judge of *zillah* Rajeshahye, regarding certain doubts entertained by Mr. Pringle upon the legality of an order passed by your court on a petition presented by the *mokhtar* of Rajinder Mitter.

2. In reply, I am desired to observe, that the question which has given rise to this reference seems to be simply as to the legality or otherwise of the practice of permitting *mokhtars* to file *vakalutnamahs*, in suits wherein their principals are parties; and to acquaint you, that the opinion entertained by you on the subject, corresponds in every respect with the view which this Court have taken of it.

3. The Court observe, that to execute *per alium*, [that other being duly authorized,] is to execute *per se*; and that the regulations consider these acts as one and the same; as is clear from the more explicit wording of Section 13, Regulation XXVII. 1814, which prescribes the performance of certain acts to be done *by the party or his authorized agent*. Although the wording of Section 8, Regulation VII. 1793, is not different from that of Section 21, Regulation XXVII. 1814, yet, from the time of its enactment (two and thirty years ago), *vakalutnamahs* executed by agents duly authorized, have, by all the courts, been regarded as equally good and valid with those executed by the parties themselves.

4. The Court therefore are of opinion, that it would be inexpedient to put a stop to a practice which has been sanctioned by universal usage, which is attended with much convenience to parties in suits, and which the regulations in force do not appear to prohibit.

5. You will be pleased to furnish the judge of Rajshahye with a copy of this letter, for his information and future guidance.

April 28, 1826.

To the Moorshedabad Court of Appeal, dated the 5th May, 1826.

No. 418.
1814.
Reg. XXVII.
Sec. 31.

The Court of Sudder Dewanny Adawlut have had before them your officiating judge's letter, dated the 24th ultimo, requesting to be informed, whether it is competent to the courts to order the whole fees to be paid to the *vakeels* in cases adjusted by *razeenamah* after evidence has been taken; or whether the rule in Section 31, Regulation XXVII. 1814, for giving one-half the established fee in cases so settled, after the requisite pleadings shall have been filed, is applicable after evidence has been taken.

2. In reply, I am desired to communicate to you, for the information and guidance of your officiating judge, that in cases adjusted by *razeenamah* after evidence has been completed, the *vakeels* are entitled to their whole fees, in like manner as if no *razeenamah* had been admitted.

May 5, 1826.

No. 419.

1818. Reg. XII. Sec. 3, Cl. 4. 1824. Reg. VI. Sec. 5.

To the Calcutta Court of Circuit, dated the 12th May, 1826.

I am desired by the Court of Nizamut Adawlut to acknowledge the receipt of your letter, under date the 3d instant, requesting their opinion on the following question, relative to the power of a magistrate under clause fourth, Section 3, Regulation XII. 1818, with reference to the amendment of that section contained in Section 5, Regulation VI. 1824, viz. whether on a *second* conviction of simple theft of property not exceeding 300 rupees, (the amount or value of property stolen in the *first* case being above 10 rupees, but not exceeding 300 rupees,) a magistrate is competent to pass sentence of punishment to the extent of the powers vested in him by Regulation XII. 1818; or whether it is incumbent on him to commit the case for trial before the court of circuit.

2. In reply, I am desired to communicate to you the opinion of the Court, that a magistrate is competent to pass sentence of punishment in such case, provided that the amount of the latter theft does not exceed the sum of 300 rupees.

3. I am directed at the same time to observe, that there appears to be an ambiguity in the wording of Section 5, Regulation VI. 1824, inasmuch as agreeably to the provisions of Regulation XII. 1818, previous conviction of a heinous crime of whatever nature does not preclude the magistrate's judicial cognizance of a charge of the simple theft not exceeding 300 rupees.*

May 12, 1826.

No. 420.

1814. Reg XXVII. Sec. 37, Cl. 3. 1824. Reg. XVI.

To the Judge of Zillah Rahjeshahye, dated the 26th May, 1826.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 19th instant, submitting for the consideration and opinion of the Court, the following question, namely: in causes where the Hon'ble Company in their commercial capacity are one of the parties, is the written order on unstamped paper, filed as directed in clause 3, Section 37, Regulation XXVII. of 1814, sufficient legal authority for the *vakeel* of Government to conduct the suit or defence on the part of the Company? Or, if Azeem prosecute Kurreem Oolla, the agent on the part of the commercial resident of Rungpore at the Bograh factory, and, on the plaint being forwarded to the Board of Trade, under Regulation II. of 1814, it is resolved that the suit shall be defended by the Company, is an unstamped order, prepared according to clause 3, Section 37, Regulation XXVII. 1814, by the commercial resident of Rungpore in his official capacity, sufficient authority for the Government *vakeel* to conduct the defence?

2. In reply, I am desired to communicate to you the opinion of the Court, that clause 3, Section 37, Regulation XXVII. 1814, not containing any mention of stampt paper,

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* Regulation VI. 1829, prescribes the course of proceeding to be pursued in such cases.

and not having been rescinded by any subsequent enactment, such order having always hitherto been received by the courts though upon unstamped paper, and the words, "commercial transactions," in the appendix to Regulation XVI. of 1824, not appearing to the Court to be properly construable as inclusive of the order of Government, or an officer of Government, to plead in a suit in which Government is a party, the Court are of opinion that such order may be accepted as a sufficient authority, though written upon unstamped paper.

May 26, 1826.

To the Judge of Zillah Allahabad, dated the 2nd June, 1826.

No. 421. 1812. Reg. V. Sec. 15.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 23rd ultimo, requesting the opinion of the Court on the following point. An individual, whose property is attached for a balance of revenue, executes the bond required by Section 15, Regulation V. 1812, but omits to prefer his suit within the prescribed period, and the amount of the demand is in consequence realized from him or his surety: can a suit subsequently instituted by him, to try the justness of the claim, be decided on a summary inquiry under the spirit of Section 17 of that regulation, or must such suit be a regular one?

2. In reply, I am desired to communicate to you the opinion of the Court, that although the omission on the part of the tenant and his surety to institute a suit, within the period named in the bond, subjects his property to re-attachment and sale, according to the ordinary process, yet it does not deprive him or his surety of the benefit of a summary suit, for the recovery of damages on account of injury sustained by the illicit sale of the property.

June 2, 1826.

To the Acting Magistrate of Zillah Ghazerpore, dated the 23rd June, 1826.

No. 422. 1797 Reg. II. Sec. 3, Cl 1. 1807 Reg XIV Sec. 20. 1795 Reg. XVII. Sec. 14.

The Court of Nizamut Adawlut have had before them your letter, dated the 11th instant, requesting the opinion of the Court, as to whether landholders in the district of Benares are liable to a fine by the magistrate in cases of theft of property at night from within their villages.

2. In reply, I am desired to refer you to clause 1, Section 3, Regulation II. 1797, (declared to be still in force, by Section 20, Regulation XIV. 1807,) and to communicate to you the opinion of the Court, that landholders are liable to fine, only when they wilfully neglect to apprehend and deliver over to the police officers any persons whom the village watchmen are required to apprehend by Section 14, Regulation XVII. 1795, or when they make any other default of the nature described in the rule above quoted.

3. I am, at the same time, directed to call your attention to the circular orders of the Nizamut Adawlut, under date the 10th November, 1820, No. 45 of the printed orders.*

June 23, 1826.

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* No. 241, page 226, vol. 1, N. A Cir. Or. Baptist Mission Press Edition.

No. 423.
1822.
Reg I
Secs. 3 and 4.
1807.
Reg IX. Sec. 19.

To the Magistrate of Zillah Behar, dated the 30th June, 1826.

The Court of Nizamut Adawlut have had before them your letter, dated the 15th instant, requesting their opinion, as to whether you are authorized to punish persons convicted of affray attended with slight wounding, and whether you are competent to award labour, as part of the sentence, against persons convicted of such offences.

2. On the first point, I am desired to communicate to you the opinion of the Court, that as by Section 3, Regulation I. 1822, affrays unattended with homicide, *severe* wounding, or other aggravating circumstances, are declared punishable by the magistrate, you are competent to punish of your own authority persons implicated in an affray, although attended with slight wounding; and on the second point, I am directed to observe, that, as the magistrates are competent to award labour to offenders sentenced under Section 19, Regulation IX. 1807, [conformably to which they are, by Section 4, Regulation I. 1822, declared competent to pass sentences in cases of affray,] under the regulation last quoted it would appear to be discretionary with the magistrate in such cases to accompany his sentence with an award of labour and irons, or not, according as he may judge fit, with reference to the particular circumstances of each case, and to the age, bodily condition, and rank in life of the offenders.*

3. At the same time the Court desire me to express their hope, that you will not lose sight of the instructions contained in their circular order, under date the 27th of August 1819.†

June 30, 1826.

No. 424.
1803
Reg. III. Sec. 16.

To the Acting Joint Magistrate of Futtehpore, dated the 30th June, 1826.

The Court of Nizamut Adawlut have had before them your letter, dated the 13th instant, together with its enclosed petition (and translation thereof), from the *sudder ameen* at your station.

2. In reply, I am desired to acquaint you, that the Court do not perfectly comprehend the object of the petitioner, but with reference to the desire he has expressed to be informed, whether he should decide according to *shurreh* [Mahomedan Law] or not, I am directed to observe, that he should so decide in the cases detailed in Section 16, Regulation III. 1803, wherein Moosulmans are the parties, applying through you for information, where he may need it on any doubtful point of law, to the established law officer of the court of Cawnpore or Allahabad, as the case may belong to the one district or the other.

3. You will be pleased to communicate the above remarks to Surajool Hussun, in reply to his representation submitted through you.

June 30, 1826.

No. 425.
1824.
Reg. XIV.

To the Judge of Zillah Allahabad, dated the 14th July, 1826.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 26th ultimo, requesting to be informed, whether, in referring summary suits to a collector,

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* The magistrate's powers with respect to the offence of affray have been enlarged by Regulation VIII. 1828.

† No. 223 in page 204, vol. 1, of N. A Cir. Or. Baptist Mission Press Edition.

under Regulation XIV. 1824, it is necessary, that each individual case should be accompanied by a separate English precept.

2. In reply, I am desired to communicate to you the opinion of the Court, that under clause 2, Section 2 of the regulation above cited, it is necessary, that each case referred should be accompanied by a separate precept.

July 14, 1826.

To the Magistrate of Zillah Bundelkhund, dated the 14th July, 1826.

No. 426.
1826.
Reg III. Sec. 5.

I am desired by the Court of Nizamut Adawlut to acknowledge the receipt of your letter, dated the 13th ultimo, requesting their opinion as to whether, with advertence to the provisions of Section 5, Regulation III. of 1826, in the event of a prisoner, confined under civil process, being sentenced to a reduction of his allowance for the space of two months, if the said prisoner should subsequently satisfy the demand of his creditor, (with a view, perhaps, to avoid the penalty of spare diet by attaining his release from the civil power,) the magistrate would be authorized to commute the punishment so awarded to fine or imprisonment, or in any mode to interfere with his release, in pursuance of the sentence of the criminal court.

2. In reply, I am desired to communicate to you the opinion of the Court, that the magistrate would not be authorized to commute in any manner the punishment so awarded, but that the prisoner should, on payment of the demand against him, be immediately released.

July 14, 1826.

To the Calcutta Court of Appeal, dated the 28th July, 1826.

No. 427.
1819
Reg II Sec 30, Cl. 1

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 19th of May last, requesting their opinion on the following points:

First. Whether in a suit brought in the first instance in a *zillah* court, under clause 1, Section 30, Regulation II. 1819, and decided by that court under clause 6, after receiving the report of the collector made in pursuance of the latter clause, a regular appeal is open to the provincial court from such decision, or whether the appeal can be admitted on special grounds only.

Secondly. Supposing the *zillah* court to try and decide a suit instituted under the clause and section above-cited, without making the reference therein required, does such omission invalidate the whole proceeding and decision of the *zillah* court, and render a new trial necessary *ab initio*, or what is the proper course to correct the error?

2. On the first question, I am desired to communicate to you the opinion of the Court, that the parties in the suits therein referred to are entitled, as a matter of right to a regular appeal from the decision of the *zillah* court; and on the second question, that under the circumstances therein stated, a new trial would not be necessary, but that, on such occasions, your court should send back the case to the court below for retrial, after having

obtained the collector's report; this course of proceeding appearing to be a sufficient remedy for the defect, without exposing the parties to any increase of expense.

July 28, 1826.

To the Judge of Zillah Midnapore, dated the 4th August, 1826.

No. 428.
1793
Reg XXXVI.
1824
Reg XVI

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 25th ultimo, with its enclosure from your register, requesting the opinion of the Court as to the description of stamp paper on which copies, required by individuals, of deeds registered under Regulation XXXVI. of 1793, should be written, in conformity with Regulation XVI. of 1814.

2. In reply, I am desired to observe, for the information and guidance of your register, that supposing such deeds not to have been filed in any court of judicature, and that copies of them are required from the office established for the registry of deeds, such copies must, agreeably to the rule for copies contained in the regulation last quoted, be written either on paper bearing the same stamp as the original deed, or on paper of the value of eight rupees, according as the party taking out the copy may, or may not, have a direct interest in the subject matter of the deed.

3. The Court however cannot concur with your register, that it must follow from this construction, that all copies of deeds which may have been filed in civil suits, must also be written on stamp paper of the value of eight rupees; inasmuch as that, having been filed, they become records, which are specially exempted from the description of stamps required for other deeds, not of record.*

August 4, 1826.

To the Judge of Zillah Shahabad, dated the 4th August, 1826.

No. 429.
1793.
Reg IV Sec 2
1814.
Reg. XXVI Sec 5.
Cl 4

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 22nd ultimo, with its enclosure from your register, requesting the Court's opinion relative to the construction of Section 2, Regulation IV. 1793, and clause 4, Section 5, Regulation XXVI. 1814.

2. In reply, I am desired to observe, for the information and guidance of your register, that the former rule is not modified by the latter, and that no plaint can legally be filed, but by the parties, or their *vakeels* duly empowered.

3. The Court, however, do not deem it necessary, that the plaintiff should be nonsuited in a case where the plaint may have been irregularly filed, as described by your register, [viz. by a *mokhtar*:] in such cases they are of opinion, that the parties should be instructed to appoint *vakeels* to conduct their suit, or attend and conduct them in person: on their complying with which instructions, the cases should be tried and decided, as if the irregularity had not occurred.

August 4, 1826.

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* See Regulation X. of 1829, Schedule A. Articles 20 to 23, and Schedule B. Article 3.

To the Dacca Court of Circuit, dated the 22nd September, 1826.

No. 430.
1824
Reg. XV Sec 3.

The Court of Nizamut Adawlut have had before them two letters from your senior judge, dated the 1st and 2nd instant, with their respective enclosures, relative to a difference of opinion which has arisen between your court and the magistrate of Dacca Jelalpore, as to the proper construction of Section 3, Regulation XV. 1824.

2. In reply, I am desired to communicate to you the opinion of the Court, that the order of your senior and third judges, dated the 16th and 24th of June last, directing the magistrate to make further inquiry in the mode pointed out by the regulations into the alleged fact of dispossession, in the case of Kishen Chunder Baboo *versus* Anund Chunder, was legal and proper.

3. To avoid misconstruction, however, I am directed to add, that the Court do not look on the order in question as the result of an appeal entertained on the merits of the case, but merely as an interlocutory order; the object of which was to cause the performance by the magistrate, of a duty which he was bound, but had omitted, to perform under the provisions of Regulation XV. 1824, previously to passing a decree under that enactment.

4. The Court are at the same time of opinion, that the admission of an appeal from a decree passed under the enactment above cited, should be admitted solely on the plea of the irrelevancy of the regulation to the case appealed.*

September 22, 1826.

To the several Courts of Appeal, dated the 22nd September, 1826.

No. 431.
1814
Reg 1 Sec 11.
1824
Reg. XVI. Sec. 3.

It having been brought to the notice of the Court of Sudder Dewanny Adawlut, that there is no rule extant by which the value of security bonds for a specific amount should be determined; Section 11, Regulation I. 1814, having been rescinded by Section 3, Regulation XVI. 1824, and being the only rule which was applicable to the case; I am desired to communicate to you the opinion of the Court, that under such circumstances, instruments of the nature above specified should be received on plain paper, until the Government may declare, by a formal enactment, the amount of the stamp paper on which they should be executed.†

2. You will be pleased to furnish the several judges within your division, with a copy of the above construction for their information and guidance.

September 22, 1826.

No. 432.
1805.
Reg II.

In the case of Murdun Sing and others *versus* Nujub Ali and others, it was held, that notwithstanding the *sixty* years mentioned in Regulation II. 1805, no claim can go back beyond the date of the cession of the province; and this, without reference to defendant's possession having been fair or unfair.

September 26, 1826.

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* By Regulation II. of 1829, however, an appeal from a decision under Regulation XV. of 1824, may now be admitted by the commissioner of circuit on any ground.

† This has been since done by Regulation X of 1829, Schedule B

No. 433.

1796 Reg X.

To the Acting Magistrate of Zillah Ghazeepore, dated the 23rd October, 1826.

The Court of Nizamut Adawlut have had before them your letter, dated the 1st ultimo, together with its enclosed copy of correspondence on the subject of the prisoners Beeram and others, whose release has been ordered by the court of circuit; to which measure you object.

2. In reply, I am desired to acquaint you, that as it was clearly competent to the court of circuit to annul your order in case of those individuals, on the ground that the evidence was, in the judgment of that court, insufficient for their conviction; your reference was not agreeable to the intent of the provisions of Regulation X. 1796: the court of circuit therefore was authorized to decline making it, and this Court does not deem it necessary to enter into the merits of the case, or to pass any order on the subject.

October 23, 1826.

No. 434.

1824 Reg XV

To the Benares Court of Circuit, dated the 27th October, 1826.

The Court of Nizamut Adawlut have had before them your letter, dated the 29th ultimo, with its enclosed Persian proceedings, in the case of Bheekun *versus* Nukchede, submitted at the request of the acting magistrate of Juanpore, under the provisions of Regulation X. 1796, with a view to ascertain the opinion of this Court, as to the relevancy or otherwise of Regulation XV. 1824, to the case of the individuals above-mentioned.

2. In reply, I am desired to communicate to you the opinion of the Court, that as the house, regarding which the present dispute originated, appears from the evidence taken before the assistant, and the further inquiry made by the magistrate, to have been actually locked up by the plaintiff Bheekun, previously to his departure for Benares, his possession must be held to have continued even during his absence; that the violent entry by the defendant Nukchede, effected by forcibly opening the lock, must be considered to constitute a case of dispossession within the meaning of the provisions of Regulation XV. 1824; and that the delay in bringing forward the case is sufficiently explained by the absence of the plaintiff, who was ignorant of the dispossession until, returning to Juanpore, he found what Nukchede had done.

October 27, 1826.

No 435.

1824 Reg XVI
1808 Reg IX Sec 5
1822 Reg V

To the Commissioner of Rungpore, dated the 3rd November, 1826.

The Court of Nizamut Adawlut have had before them your letter, dated the 14th ultimo, requesting to be informed whether the mitigation of the punishment of highway robbery, contained in Regulation XVI. of 1825, should be held to apply to cases of outlawed robbers, convicted under the provisions of Section 5, Regulation IX. of 1808; and if so, whether or not such trials are to be referred to the Nizamut Adawlut.

2. In reply, I am desired to observe, that all proclaimed robbers are now tried under Regulation IX. 1808, as modified by Regulation V. 1822; that is, they may, accordingly as the superintendent of police may decide, be tried either for the contumacy, or for the

offence on account of which they were proclaimed ; and to communicate to you the Court's opinion, that where they are tried for the original offence, the court trying them may award either the full or mitigated sentence, as the case may be aggravated or unaggravated ; referring the trial to this Court, where the full, and ordering execution of the sentence without reference, where the mitigated sentence may be passed. Where the trial may be for the contumacy only, and the prisoners may be convicted of the charge, the Court are of opinion, that the judge trying them should still conform to the provisions of Section 8, Regulation IX. 1808, that is, pass the full sentence, and refer the trial to the Nizamut Adawlut.

November 3, 1826.

To the Magistrate of Zillah Jungle Mehauls, dated the 3rd November, 1826.

No. 436.

1793 Reg. XXXIX.

The Court of Nizamut Adawlut have had before them your letter, dated the 24th ultimo, requesting the Court's opinion, as to whether a *cauzy* is competent to authenticate a power of attorney, so as to render it incumbent on the courts to admit it.

2. In reply, I am desired to communicate to you the opinion of the Court, that the term "other law papers" used in the preamble to Regulation XXXIX. of 1793, must be held to include powers of attorney, the authentication of which therefore is within the competency of a *cauzy* ; but at the same time the Court observe, that you are clearly at liberty to call for further evidence in any case, where there may appear reason to doubt the due execution of an instrument of that nature by the individual whose act and deed it purports to be.

November 3, 1826.

To the Moorshedabad Court of Circuit, dated the 10th November, 1826.

No. 437.

1796 Reg X. 1814 Reg XXVI. Sec 8, Cl. 10 1821. Reg III Sec 5. 1814 Reg XXV Sec. 12, Cl. 1.

The Court of Nizamut Adawlut have had before them a letter from your officiating judge the Hon'ble W. Melville, dated the 4th instant, submitting a copy of his correspondence with the magistrate of Beerbhoom, and of the proceedings in the cases of Syud Yar Ally and Lukheenarain, petitioners.

2. In reply, I am desired to communicate to you the opinion of the Court, that the conduct of the magistrate, in withholding the proceedings required, until after your officiating judge's order had been repeated three times, was obviously improper, and unwarranted by Regulation X. 1796, or any other regulation ; and the Court desire, that you will intimate to him their expectation, that he will yield more ready obedience in future to the requisitions of superior authority, and that he will act in stricter conformity to the rules laid down for his guidance.

3. On the particular point at issue between your officiating judge and the magistrate, I am desired to observe, that although no individual has a right to appeal to your court after the expiration of one month from the date of the magistrate's order, calculated conformably to the rules contained in clause 10, Section 8, Regulation XXVI. 1814 ; and although, according to Section 5, Regulation III. 1821, your court is not competent to

receive a petition of appeal after the expiration of the above-mentioned period, without due cause being assigned for the delay, yet that you are not only authorised, but required, under the general powers vested in you, as a superintending authority, by clause 1, Section 12, Regulation XXV. 1814, to call for a magistrate's proceedings in any case wherein you may see reason to presume a failure of justice, without reference to the source from which your information is derived.

November 10, 1826.

No. 438.
1824.
Reg XVI.
Sec 6. Cl 3
Sec 7, Cl 1.

Extract of a letter to the Judge of the Southern Division of Bundelkhund, dated 26th November, 1826.

PAR. 3. The only point upon which the Court deem it necessary to pronounce an opinion is, as to whether the register was, or was not, competent to decline registering a deed brought to him for that purpose on paper not bearing the prescribed stamp; and on this point I am desired to observe, with reference to the provisions contained in clause 3, Section 6, Regulation XVI. 1824, and clause 1, Section 7 of the same enactment, to which your attention is particularly directed, that it was not only competent to, but incumbent on the register to decline registering an instrument not drawn upon the paper required by that regulation, provided that, with reference to Section 8, the irregular stamp does not equal or exceed in value the stamp which ought to have been used. If it equal or exceed the regular stamp in value, the register has clearly no right to take exception it, or to decline registering the deed so stamped.

No. 439.
1803
Reg II Sec 5.
1825
Reg. XXI.

To the Secretary to Government in the Judicial Department, dated the 24th November, 1826.

I am desired by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter, under date the 9th instant, together with its enclosed correspondence, relative to a difference of opinion between the assistant to the commissioner in Kumaoon and the judge of *zillah* Seharunpore, upon the construction of Section 5, Regulation II. 1803, requesting the Court to issue instructions upon the subject to the judge of the latter district.

2. In reply, I am desired to state, for the information of his Excellency the Right Hon'ble the Vice-President in Council, that, in the opinion of the Court, the suits which form the subject of the correspondence adverted to were clearly cognizable in the *zillah* court of Seharunpore, the defendants in both instances residing within that district; but I am directed to add, the Court cannot form any opinion relative to matters arising within the jurisdiction of the Deyra Doon, which tract of country has, by Regulation XXI. of 1825, been annexed to Kumaoon, where the laws and regulations of Government are not in force. Instructions to this effect will be issued to the judge of *zillah* Seharunpore.

November 24, 1826.

To the Judge of Zillah Burdwan, dated the 8th December, 1826.

No 440.

1819 Reg VIII Sec 10 1793 Reg III Sec 10

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 27th ultimo, together with its enclosure from the register of your district, requesting information as to the mode of proceeding to be adopted, in the event of a suit being preferred against him for an act done by him in his official capacity under Section 10, Regulation VIII. 1819.

2. In reply, I am desired to observe, for the information and guidance of yourself and of your register, that there appearing to be no provision either in Section 10, Regulation III. 1793, or any other enactment, which declares a register amenable to the jurisdiction of a *zillah* or city court for an act done by him in his official capacity, and the specific regulation also, under which the register of Burdwan presides at the sale of *putnee* tenures not containing any provision of this nature, the Court are of opinion, that a suit will not lie against such officer, and should not be admitted.

3. The Court at the same time remark, that the exemption of the register from the jurisdiction of the court cannot operate injuriously to persons deeming themselves aggrieved, who will always be able to obtain redress, by an action against the *zemindar*, whose allegation of arrears occasioned the sale, or the purchaser, or both; by which course of proceeding the merits of the case may be as fully investigated as if the officer who presided at the sale had been made a defendant.

December 8, 1826.

From the Calcutta Court of Appeal, dated the 15th February, 1826.

No. 441.

1825 Reg XVIII

With reference to the superior Court's letter, dated the 6th ultimo, we have the honor to transmit the subjoined copy of a letter from the judge of Hooghly, bearing date the 11th instant, and of the list which accompanied it.

From the Judge of Hooghly to the Calcutta Court of Appeal, dated the 11th February, 1826.

1. I have the honor to acknowledge the receipt of your letter, No. 71, of the 26th ultimo, together with a copy of a letter from the Court of Sudder Dewanny Adawlut, dated the 6th of January, regarding certain causes lately pending before the Chinsurah court of appeal.

2. In compliance with the 3rd paragraph of the letter from the Sudder Dewanny Adawlut, I have the honor to submit a list of the causes, agreeably to the form prescribed by the superior Court; and at the same time, beg permission to state, that the causes contained in the paper marked A, were actually admitted by the Chinsurah court of appeal, and were pending before that tribunal, upon the transfer of the settlement to the British commissioners.

3. The papers marked B and C contain respectively, a list of such summary appeals, and miscellaneous petitions as were depending before the same authority, at the time of the transfer.

4. The records in the several causes having been duly made over to the Hooghly court of *dewanny* adawlut by the commissioners for Chinsurah, the late judge was desirous

of being informed, whether these causes were to be transferred to the Calcutta provincial court of appeal for decision, or in what other way they should be disposed of.

To the Calcutta Court of Appeal, dated the 3rd March, 1826, in reply to their letter of the 15th February, 1826.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 15th ultimo, with its subjoined copy of a letter from the judge of *zillah* Hooghly, and of the list which accompanied it, relative to certain causes lately pending before the Chinsurah court of appeal.

2. In reply, I am desired to acquaint you, that the Court of Sudder Dewanny Adawlut, under the discretion vested in them by clause 4, Section 4, Regulation XVIII. 1825, direct that you will call for the proceedings in the cases in question, and try the appeals, having first served the prescribed notice on the parties.

From the Calcutta Court of Appeal, in reply to the above, dated the 19th December, 1826.

With reference to the orders of the Sudder Dewanny Adawlut conveyed in your letter of the 3rd of March last, we request you will report to the Court, that having called for the proceedings in the several cases therein referred to, we see reason to doubt whether they are properly referrible to this Court, under the provisions of Regulation XVIII. 1825.

2. The second clause of Section 4 of that Regulation refers to appeals from decisions in civil suits which had been decided by the European Court at Chinsurah, and which were appealable to the superior Court at *Batavia;* whereas on examination of the proceedings in the cases in question we observe, that they are appeals from decisions passed by an European Court of inferior jurisdiction at Chinsurah, [Mr. Herklotts, acting 2nd resident,] pending before a higher tribunal [the court of appeal, consisting of Mr. Overbeck, the 1st resident, and Messrs. Bowman and T. Michel,] at the same place, and consequently as we presume (especially considering the trifling amount or value in action, some of them for 8 and 9 Rs. not appealable to the superior Court at *Batavia.*

3. Under these circumstances, and considering the very heavy pressure of business already before this court, we are induced to solicit the superior Court's reconsideration of their orders, under date the 3rd March last, and to suggest, that the cases above-mentioned be sent back for trial and decision by the *zillah* judge of Hooghly, subject to further appeal to this Court or otherwise, as the case may be, under the general regulations in force.

To the Calcutta Court of Appeal, in reply to the above, dated the 29th December, 1826.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 19th instant, in reply to my letter of the 3rd March last, on the subject of certain appeals from the European court at Chinsurah, and suggesting, for the reasons assigned, that those cases be sent to the judge of *zillah* Hooghly for trial and decision.

2. In reply, I am desired to acquaint you, that as there is no provision in Regulation XVIII. 1825, which authorizes a reference of such cases to the *zillah* judge; as it was evidently intended, that appeals from the decisions in question should lie somewhere, and as agreeably to the spirit of the enactment, your court appears the proper tribunal for hearing and deciding such appeals, the Court see no reason to depart from their former instructions, which you will be pleased to follow accordingly.

December 29, 1826.

To the Judge of Zillah Burdwan, dated the 29th December, 1826. No. 442.

1820 Reg III Sec. 2

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 12th instant, requesting their construction of Section 2, Regulation III. 1826, regarding the appointment and removal of native officers attached to the civil jail.

2. In reply, I am desired to acquaint you, that, as the magistrate is now responsible for the safe custody of the *dewanee*, as well as of the *foujdaree* prisoners, the appointment and removal of the native officers attached to the jails of both establishments should be vested exclusively in that officer; but that there does not appear to be any necessity for making a formal transfer of the *dewanee* jail *omlah* to the establishment of the *foujdaree* court.

December 29, 1826.

To the Judge of Zillah Goruckpore, dated the 23rd February, 1827. No. 443.

1825 Reg XX.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 8th instant, together with its enclosures from your register, requesting, for the reasons assigned, permission to review his judgment in the case of DeSouza *versus* Wroughton, or to be furnished with such instructions as the court may deem necessary on the occasion.

2. In reply, I am desired to observe, that Regulation XX. 1825, which has reference to the act of parliament passed in the fourth year of the reign of his present Masjety King George the Fourth, not having been promulgated until after the date on which your register had passed his decree in the above cause, he must be held to have been competent to exercise jurisdiction therein, and consequently that such prior decree must be considered to all intents and purposes as good and valid as if the regulation of posterior date, and the act of parliament which is promulgated, had never been passed. It appears therefore to the Court to be unnecessary to authorize a review, or to isue any special instructions relative to the case in question.

February 23, 1827.

To the Patna Court of Appeal, dated the 2nd March, 1827. No. 444.

1824 Reg XV. Sec 4 1813 Reg VI. Sec 5. Cl. 1.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 10th ultimo, together with its enclosed correspondence with the judge of Goruckpore, requesting the Court's opinion as to the proper construction of Regulation XV. of 1824.

2. In reply, I am desired to acquaint you, that the Court are disposed to concur in opinion with Mr. Bird, that all cases pending before him under Regulation VI. of 1813, are not necessarily referrible to the magistrate under the provisions of Section 4, Regulation XV. of 1824, but only such of them as may be brought *de novo* to the cognizance of the magistrate under Section 3, and certified by him to the judge under Section 4 of that enactment; in other words, that the original certificate from the *foujdaree* to the *dewanny* court, made under clause 1, Section 5, Regulation VI. 1813, is not a sufficient certificate for the purpose contemplated in Section 4, Regulation XV. 1824. In all cases, under Regulation XV. 1824, of course it is peremptory on the magistrate to send a copy of his proceeding to the civil court under Section 4, and on such proceeding appearing to relate

to any case that may be pending before the judge under Regulation VI. of 1813, it will be the duty of the judge to transmit his proceedings therein to the magistrate for his consideration and orders, and to proceed no further in the investigation of such case, otherwise than on the institution of a regular suit.

March 2, 1827.

No. 445. *To the Acting Magistrate of Zillah Moradabad, dated the 2nd March*, 1827.

1822 Reg VII. Sec 16 1824 Reg XV.

The Court of Nizamut Adawlut have had before them your letter, dated the 6th ultimo, submitting the Persian proceedings in a case of dispossession, decided by you between Bukshee Ram *versus* Oulad Ali and others, which case was reversed by the court of circuit; and requesting the orders of the Court thereon.

2. With reference to the reason assigned by the court of circuit for reversing your order, namely, that it involved a reversal of the collector's previous decision, I am directed to observe that it appears insufficient, because it does not appear that that officer was making a settlement, or acting under the powers vested in collectors specially by Section 16, Regulation VII. 1822, when he ordered that Thakoor Bahadoor Singh should be put into possession: besides which, in his proceeding dated the 16th of October last, he expressly provided that such order should not be carried into effect, pending the inquiry which was instituted before the magistrate. Moreover, as Bukshee Rai had avowedly retained long and undisturbed possession of the property in dispute, your order in his favour seems to be correct and proper, under the provisions of Regulation XV. 1824.

March 2, 1827.

No. 446. *To the Magistrate of Dacca Jelalpore, dated the 9th March*, 1827.

1825 Reg IV.

The Court of Nizamut Adawlut have had before them your two letters, dated the 17th of January and 26th ultimo, together with their respective enclosures, soliciting the instructions of the Court relative to the execution and enforcement of a penal bond in the case of indigo planters residing within your jurisdiction.

2. In reply, I am desired to communicate to you the opinion of the Court, that with regard to your taking penal recognizances from persons subject to your jurisdiction in your capacity of a magistrate of the East India Company, you should be guided by the provisions contained in Regulation IV. 1825; but the Court direct me to observe, that it is not within their province to determine what may be your duties and powers in this matter as a justice of the peace. If the state of things in your district appear to you to render it expedient that such recognizances should be taken, the Court recommend your consulting the advocate general, through the secretary to Government in the Judicial Department, as to their legality or otherwise.

March 9, 1827.

No. 447. *To the Acting Magistrate of Zillah Moradabad, dated the 9th March*, 1827.

1824 Reg XV.

The Court of Nizamut Adawlut have had before them your letter, dated the 17th ultimo, forwarding copy of a correspondence between yourself and the officiating judge of circuit

holding the session at your station, on the subject of a case which has been decided by you in conformity to Regulation XV. 1824, and which has been called for by that officer.

2. In reply, I am desired to observe, for your information and guidance, that though an appeal from a decision passed by a magistrate under the provisions of Regulation XV. 1824, can only be preferred to the judges at the *sudder* station, and by them admitted on the ground of irrelevancy only,* yet that the mere calling for papers does not necessarily involve the admission of appeal; and as a judge of circuit is clearly competent to examine any *fuzdaree* proceedings he may think fit, Mr. Smith's requisition to be furnished with the case in question was legal and unexceptionable.

March 9, 1827.

To the Benares Court of Circuit, dated the 16th March, 1827. No. 448.

1824 Reg XV.

The Court of Nizamut Adawlut have had before them your letter, dated the 2d instant, re-submitting the Persian papers, with an English statement of the case of Munogee and others, called for by this Court's letter of the 19th of January last, and involving a question as to the proper construction of Regulation XV. 1824.

2. In reply, I am desired to communicate to you the opinion of the Court, that your orders in the case in question are correct and proper, as the regulation cited was never intended to apply to mere *kashtkars* or cultivators of the soil; and as, even admitting its applicability to this class of persons, the acting magistrate of Juanpore should have decided in favour of the plaintiffs, their possession having been more recent than that of the defendants, and having been acquiesced in by the defendants without complaint to the Court for some considerable time previous to the occurrence of the present dispute.

3. You will be pleased to furnish the acting magistrate of Juanpore with a copy of this letter for his information and guidance.

March 16, 1817.

To the Moorshedabad Court of Appeal, dated the 30th March, 1827. No. 449.

1793 Reg. XXXVIII. 1812 Reg V Secs. 26 and 27.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 19th instant, submitting a question, as to whether an European British subject can or cannot, under the provisions of Regulation XXXVIII. 1793, be appointed manager of an estate, conformably to Sections 26 and 27, Regulation V. 1812.

2. In reply, I am desired to acquaint you, that in the opinion of the Court an European British subject is not eligible to the management in question.

March 30, 1827.

To the Judge of Zillah Burdwan, dated the 30th March, 1827. No. 450.

1810 Reg II. Sec. 30.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 15th instant, and its enclosures, requesting the instructions of the Court as to certain suits instituted under the provisions of Regulation II. 1819, in which Government is not a party concerned.

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* Appeals from the decisions of magistrates under Reg. XV. 1824, now lie to the commissioners of circuit. See Reg II. 1829, Sections 3 and 4.

2. In reply, I am desired to acquaint you, that suits referred to the collector under clause 1, Section 30 of the regulation above quoted, which are referred, not for decision but for report only, should not be considered as having been transferred from the file of the judge in consequence of such reference; and therefore, that on their being returned with the required report from the collector, the judge should proceed to try and decide them in like manner, as if no such reference had been made. From this you will perceive, that the practice of your predecessor in treating such description of cases, when returned with the report of the collector, as actually decided, in permitting them to remain as decisions until appealed from, and then entering them under the head of miscellaneous cases, was irregular.

3. The Court therefore direct, that you re-admit all such cases on the regular file of your court, whether petitions objecting to the report of the collector may or may not have been presented.

4. With regard to suits, instituted in the collector's office in the first instance, and appealed to your Court under clause 7, Section 30, Regulation II. 1819, the Court are of opinion, that the monthly abstract, and annual report of civil causes decided and depending are deficient, in not having a column to show the number of such appeals. The Court desire therefore, that in your future statements, immediately under the line "Appeals from Registers," you will introduce the words "Appeals under Regulation II. 1819," for the purpose of enabling the Sudder Dewanny Adawlut to discriminate these from other description of appeals.

[N. B. The last paragraph was circulated for general information on the same date.]

March 30, 1827.

No. 451.

1821 Reg II. Sec 7 Reg. III. Sec. 4.

To the Joint Magistrate and Additional Register of Azimghur, dated the 30th March, 1827.

The Courts of Sudder Dewanny and Nizamut Adawlut have had before them your letter, dated the 6th instant, requesting their opinion upon the following points:

1st. In cases of *moonsiffs'* and *sudder ameens'* decrees referred for execution to the *sudder ameens*, under the provisions of Section 7, Regulation II. 1821, have the *sudder ameens* authority to order the imprisonment of civil debtors, or of persons resisting the process of the court, or in short the authority of confining any persons connected with the execution of those decrees, without reference to the presiding European authority?

2nd. In cases of the nature above described, have the *sudder ameens* authority to issue *perwannahs* to the *moonsiffs* or other *mofussil* civil officers?

3rd. In cases referred for investigation and decision to the *sudder ameens* by the magistrate, under the provisions of Section 4, Regulation III. 1821, have the *sudder ameens* authority to issue *perwannahs* to the *thanadars*, police *darogahs*, or other *mofussil* police officers?

2. In reply, I am desired to acquaint you, that the Court entirely coincide with you in opinion, that no power is vested by the regulations in the *sudder ameens*, in any of the three mentioned cases, and that it is the duty of the *sudder ameens*, where the necessity may exist, to represent the matter to the judge, magistrate, or additional register as the case may be, and that the order should issue from the superior court.

March 30, 1827.

To the Judge of Zillah Beerbhoom, dated the 15th June, 1827. No. 452.

1814. Reg. XXIII. Sec 13. Cl. 1.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 8th instant, requesting to be informed whether clause 1, Section 13, Regulation XXIII. 1814, is intended to bar the cognizance of a suit by a *moonsiff*, if the defendant be not a resident inhabitant of his jurisdiction.

2. In reply, I am desired to communicate to you the opinion of the Court, that a *moonsiff* is not competent to take cognizance of a suit for money or other personal property in which the defendant is not resident within his jurisdiction.

June 15, 1827.

To the Patna Court of Circuit, dated the 13th July, 1827. No. 453.

1824. Reg XV.

The Court of Nizamut Adawlut have had before them your fourth judge's letter, dated the 23rd ultimo, reporting the termination of the city sessions for May last, and submitting the usual statements.

2. With reference to the remark of your fourth judge in the postponed case of Benoe Singh and others, I am desired to observe, that the Court's construction of Regulation XV. 1824, under date the 17th of February, 1826, is not, as supposed by your fourth judge, directly at variance with their construction of the same enactment communicated to you in my letter, dated the 4th of May last; that, in the former instance, the Court held that the provisions of the above quoted regulation would be applicable, whatever may be the nature of the *property* in dispute; and, in the latter instance, that its provisions were never intended to apply to *mere kashthars* or cultivators of the soil, or in other words to persons having no right of property in the soil, but merely disputing about the right to cultivate.

3. You will be pleased to furnish your fourth judge with a copy of this letter for his information and future guidance.

July 18, 1827.

To the Magistrate of the City of Dacca, dated the 13th July, 1827. No. 454.

1801 Reg. III.

The Court of Nizamut Adawlut have had before them your letter, dated the 15th ultimo, forwarding an original petition from an individual named Abdooruheem, and requesting the opinion of the Court on the following question: Certain deeds having been filed in a civil suit, and a decree passed by the Sudder Dewanny Adawlut founded on the integrity of the same, is it competent to a magistrate to entertain and investigate on its merits a criminal prosecution for the forgery of those very deeds, instituted by the party cast against the decree holder?

2. In reply, I am desired to communicate to you the opinion of the Court, that, by analogy to the case of perjury, the preferring of accusations for which offence by parties in civil suits has been prohibited by Regulation III. 1801, it is not competent to a magistrate to entertain a charge founded on the alleged forgery of a document which had been exhibited in a civil court, unless the judge or judges of such civil court shall have directed a prosecution for forgery, or expressly declared that the party aggrieved by such document is at liberty to prosecute.

July 13, 1827.

No 455.

1819 Reg II Sec 30, Cl 1

To the Moorshedabad Court of Appeal, dated the 20th July, 1827.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 3d instant, submitting, agreeably to the desire of the officiating judge, copies of minutes recorded by the several judges of your court, relative to the proper construction to be put upon certain provisions of Regulation II. 1819.

2. In reply, I am desired to forward to you, for your information and guidance, the accompanying copy of a letter, dated the 28th of July, 1826,* written by order of the Sudder Dewanny Adawlut to the Calcutta court of appeal, in answer to a reference made by them on the subject of suits instituted under clause 1, Section 30, Regulation II. 1819, and decided under clause 6 of the above quoted section; and I am directed to add, that the Court concur in the opinion expressed by your officiating judge, that the parties referred to in the seventh and eighth clauses are also entitled, as a matter of right, to a regular appeal from the decision of the *zillah* court.

July 20, 1827.

No. 456

1799 Reg VII Sec 15 1819 Reg VIII. Sec 18.

To the Judge of Zillah Jungle Mehauls, dated the 17th August, 1827.

I am desired by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter, under date the 2nd of June last, requesting information on the following point, viz. whether a *zemindar* is at liberty to attach the *talook* of a defaulter through the agency of a *sezawál*, without having previously instituted a summary suit, under Section 15, Regulation VII. 1799.

2. In reply, I am desired to communicate to you the opinion of the Court, that a *zemindar* is not competent, under the provisions of Section 18, Regulation VIII. 1819, to send a *sezawal* of his own authority to attach and collect the rents of the actual cultivators immediately from themselves, without having previously instituted a summary suit, under Section 15, Regulation VII. 1799, against the *talookdar* or other intermediate holder between himself and the actual cultivators.

August 17, 1827.

No. 457

1803. Reg I Sec. 2 1803. Reg VIII Sec. 3 Cl 2.

To the Magistrate of Zillah Dacca Jelalpore, dated the 31st August, 1827.

The Court of Nizamut Adawlut have had before them your letter, dated the 18th of May last, stating that on a reference to the Abridgement of the Penal Regulations by Mr D. C. Smyth, magistrate of *zillah* Hooghly, published in the year 1824, you find in No. 221, Any person summoned by the magistrate, after receiving the summons not attending as required, or although attending refusing to give evidence, is liable to punishment by fine not exceeding 500 rupees, or imprisonment for six months on default of payment, under the orders of the Nizamut Adawlut, dated the 28th February, 1811,† but this circular letter not being forthcoming in the office, you request to be favoured with a copy of it.

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* See No. 427, page 179.

† See No. 79, page 18.

2. In reply, I am desired to acquaint you, that the construction you have cited from Mr. Smyth's publication was not generally circulated to the *mofussil* courts, but merely an opinion delivered on a specific reference from the magistrate of Agra.

3. The Court of Nizamut Adawlut however, referring to former and subsequent enactments, are not of opinion that the construction in question should be adhered to, and they direct, that in the matter to which it refers you be guided by the rule contained in Section 2, Regulation L. 1803.

August 31, 1827.

To the Benares Court of Circuit, dated the 31st August, 1827.

No. 458.

1818. Reg VIII.

The Court of Nizamut Adawlut direct me to forward to you the accompanying copy of a letter from the acting magistrate of the city, dated the 26th ultimo, submitting for their opinion the following questions: *first*, whether a judge of circuit, holding a city sessions, can call for any security case (for the term of one year or less) not decided by the magistrate in the month immediately preceding his sessions, and consequently not mentioned in the statement furnished to him by the magistrate, on or without a petition being presented by the prisoner; the prisoner not having petitioned the judge at the sessions following the order for his furnishing security, and the judge not having called for the case on reviewing the statement? *Secondly*, can the court at large receive a petition, appealing from a magistrate's order for security, and call for proceedings?

2. In reply, I am desired to communicate to you the opinion of the Court, that the revision of a judge of circuit is not restricted to cases in which the magistrate has passed orders for security since the sessions immediately preceding, and consequently that he is at liberty, on or without a petition, to call for and pass orders on the case of any security prisoner confined by the magistrate, relative to whom the preceding judge may not have already recorded an order.

3. In reply to the second question, I am directed to state, that under the existing regulations, a person sentenced to imprisonment by a magistrate, on failure of furnishing specific security required by the magistrate, has an appeal to the court of circuit collectively, and that the cognizance of his case does not rest solely with the individual judge of circuit who may visit the station at which he is confined. The ground of this opinion of the Court is, that nothing short of a distinct and positive enactment to that effect can deprive any person, or description of persons, of the general right of petitioning immediately against any order by which the petitioner may deem himself aggrieved, and that in the provisions of Regulation VIII. 1818, the Court can discover no such enactment.

4. This latter construction, you will observe, is at variance with that communicated to you in the third paragraph of my letter, dated the 10th of June, 1825,* which you will therefore be pleased to consider as superseded.

5. You will of course furnish the acting magistrate with a copy of this letter, for his information and guidance.

August 31, 1827.

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* See No 360, page 161.

No. 459.

1811 Reg VII. Sec. 5. 1807. Reg. IX. Sec. 29. 1793. Reg IX. Sec. 10. 1803 Reg VI. Sec 10.

To the Benares Court of Circuit, dated the 31st August, 1827.

The Court of Nizamut Adawlut have had before them your letter, dated the 18th of June last, submitting copies of correspondence passed between your court and the magistrate of Ghazeepore, in the case of Doorga, and requesting to know, whether, under Section 5, Regulation VII. of 1811, and Section 19, Regulation IX. of 1807, a magistrate is or is not authorized to sentence persons convicted of preferring malicious and unfounded charges to six months' imprisonment, and a fine of 200 rupees.

2. In reply, I am desired to acquaint you, that the Court entirely concur in the opinion you have expressed on the point referred, and that, on reference to former and subsequent enactments, the Court are of opinion that the construction cited by the magistrate should not be adhered to.

3. The Court are further of opinion, that according to the regulations as they now stand, a person guilty of the offence mentioned in Section 10, Regulation IX. 1793, and Section 10, Regulation VI. 1803, may be imprisoned for any period not exceeding six months, or fined in any sum not exceeding fifty rupees; or if he be a proprietor of land paying more than 10,000 rupees to Government, or of *ayma* land paying more than 500 rupees, or of rent-free land yielding more than 1,000 rupees per annum, in any sum not exceeding 200 rupees.

August 31, 1827.

No. 460.

1818. Reg VIII. Sec 8. 1825 Reg. IV. Sec 4.

To the Benares Court of Circuit, dated the 31st August, 1827.

The Court of Nizamut Adawlut have had before them a letter from your fifth judge, dated the 25th ultimo, together with its English and Persian enclosures, reporting the jail delivery of the city of Benares, for the month of June last, and submitting for the consideration and orders of the Court the following queries, regarding the intent and meaning of Regulation VIII. 1818, and Regulation IV. 1825.

First. Clause 2, Section 8, Regulation VIII. 1818, providing, that it is not necessary to revise the proceedings and orders passed by a magistrate as defined in Section 8, unless a petition is prepared to the judge of circuit: is this to be construed into a prohibition to the circuit judge to call for the proceedings unless the petition is presented? and if the papers are called for, does the order of the judge of circuit obtain by his single opinion, or is it requisite, in revising the order, to have the concurring opinion of two judges?

Secondly. Supposing the person, who is required to find security, complies with the order to avoid the sentence of imprisonment, but objects to the grounds on which such a measure is considered necessary, is the appeal to be preferred to the court at large, or does it rest with the judge of circuit holding the sessions, to call for the proceedings, and pass his opinion on the merits of the case?

Thirdly. Supposing the judge of circuit holding the sessions in June shall look over the lists furnished by the city magistrate for *May*, and not having received any petition against the order passed by the magistrate at the time of holding the session, a petition shall be presented to the court, after the conclusion of the jail delivery, and the usual statements are forwarded to the Nizamut Adawlut, will it rest with the judge who has held the sessions to pass the order, or will it lie over for the judge of circuit holding the sessions of the ensuing month?

Fourthly. If a prisoner is confined in jail until he finds security, and shall not present a petition until two or three sessions have passed, is it competent to the judge holding the half-yearly sessions to call for the proceedings and pass his order on the case, or does lapse of time preclude his interference ?

Fifth. Whether the orders of a magistrate, passed under the provisions of Regulation IV. 1825, empowering the *zillah* and city magistrates to take *moochulkas* or penal recognizances for the maintenance of the peace, &c. are open to a general appeal, rather than depending on the arrival of the judge of circuit at the station at which they are passed?

2. In reply, the Court desire me to communicate to you the following instructions, for the information and guidance of your fifth judge.

First. A judge of circuit holding the sessions may call for any proceedings of a magistrate connected with a requisition of security without petition, and pass such orders thereon as he may deem just and proper, and in such cases it is not necessary that there should be the concurring opinion of two judges to reverse an order of the magistrate; a judge of circuit singly, while holding the sessions, having the power of the court of circuit collectively for this purpose.

Secondly. After an individual, from whom security has been demanded, has complied with the requisition, he is at liberty to prefer his petition to the court of circuit at the *sudder* station, or to the judge holding the sessions, who, however, is not competent to reverse or alter the order passed by the magistrate in such case, without obtaining the concurrence of one of his colleagues to that effect.

Thirdly. After a judge of circuit has concluded a jail-delivery at the station of a magistrate, and has dispatched to the Nizamut Adawlut his report on the completion thereof with the usual statements, he must be held to be divested of the powers of a judge of circuit holding the sessions so far as that station is concerned; consequently he is not then singly competent to pass an order for the release of a prisoner detained on requisition of security, and any petition presented by such prisoner, at that time, should either be preferred at the next sessions, or to the court of circuit at the *sudder* station or a judge of circuit who has just concluded the sessions may make it up, and under the general powers vested in a single judge of circuit, may record his opinion thereon, transmitting it, if necessary, for the confirmation of one of his colleagues at the *sudder* station.

Fourthly. A judge of circuit holding the half-yearly sessions is competent to call for the proceedings in the case of a prisoner detained on requisition of security, although such prisoner may not have presented any petition for two or three sessions after the order for his confinement.

Fifthly. Section 4, Regulation IV. 1825, should not be construed to preclude an individual in confinement for security under the provisions of that rule from preferring an appeal to the court of circuit at the *sudder* station, when no order may have been passed on his case by the judge of circuit at the sessions of jail-delivery preceding; and the judges of the court at the *sudder* station are competent to pass such orders thereon, under the general regulations relative to appeals, as may appear in their judgment to be just and equitable.

August 31, 1827.

No. 461.

To the Judge of Zillah Jessore, dated the 7th September, 1827.

1819 Reg VIII. Sec. 8

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 8th of May last, requesting their opinion on the construction of Section 8, Regulation VIII. 1819, as to the following points:

First. Whither the *zemindars*, entitled to obtain periodical sales of certain descriptions of tenures for arrears of revenue under the above section and regulation, can transfer that right to their *ijaradars*, or whether the proprietor of an estate paying revenue direct to Government, is debarred from the advantages of Section 8, by the circumstance of having let his estate in farm.

Secondly. Should the opinion of the Court be in favour of the power of the *zemindar* to transfer his right of obtaining those sales to his farmer, you request to know whether the same right of transfer is to be considered as existing also in the *ijaradar*, in favour of a third party to whom he may have similarly under-let the estate.

2. In reply, I am desired to communicate to you the opinion of the Court, that a *zemindar* is not entitled to transfer to an *ijaradar* his right of obtaining periodical sales of *putnee* tenures for arrears of revenue, under Regulation VIII. 1819, the individuals specified in the section above quoted, as entitled to apply for periodical sales, being proprietors under direct engagements with the Government. This construction involves of course a reply to your second question.

September 7, 1827.

No. 462.

To the Officiating Commissioner of Zillah Cuttack, dated the 7th September, 1827.

1814. Reg. I Sec. 14, Cl 1

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 30th ultimo, stating, that a petition has lately been presented to you by a person claiming to succeed to one of the tributary *mehals*, the *peshkush* of which is 4,780 rupees 5 annas 12 gundas 2 cowries, and the produce of which is stated to be 1,02,000 rupees 4 annas 12 gundas; and requesting the opinion of the Court, as to whether the value of the estate sued for should be assumed at the *peshkush*, or at the estimated produce.

2. In reply, I am desired to communicate to you the opinion of the Court, that in conformity to the first clause of Section 14, Regulation I. 1814, the value of the property should be assumed at the *peshkush*, which may be held to be the amount of the annual *jumma* payable to Government. Such indeed appears to have been the construction already adopted by your court, as may be seen on reference to the *Dekeaul* case, filed on the 17th of October 1816, and decided in this Court in March, 1825.

September 7, 1827.

No. 463.

To the Judge of Zillah Tipperah, dated the 12th October, 1827.

1821 Reg. II. Sec. 5. Cl. 3

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 6th ultimo, bringing to notice a practice which prevails in your district, and soliciting the Court's construction of clause 3, Section 5, Regulation II. 1821.

2. In reply, I am desired to communicate to you the opinion of the Court, that the construction adopted by the *sudder ameens* attached to your court is correct, and

that it was not intended that parties in suits referred to these authorities should be subjected to the expense of stamp paper, though the amount or value of the property in dispute should exceed 150 rupees.*

October 12, 1827.

To the Magistrate of Zillah Burdwan, dated the 30th November, 1827. No. 464.

The Court of Nizamut Adawlut have had before them your letter, dated the 24th instant, requesting to be informed, whether the offence of selling counterfeit gold mohurs (much defaced) for bullion, knowing the same to be counterfeit, would come under the provisions of clause 1, Section 10, Regulation XVII. 1817. 1817 Reg XVII Sec. 10, Cl. 1.

2. In reply, I am desired to communicate to you the opinion of the Court, that the act of the seller in the case put by you, (though unquestionably a fraud, and punishable as such under the general regulations, and the provisions of the Mahomedan law,) cannot be held to fall within the specific rule cited by you, inasmuch as the offence of "selling" counterfeit coin as bullion cannot, by any construction, be made to signify the offence of "paying or tendering in payment," which are the terms used in the rule in question.

3. The Court at the same time concur in the opinion expressed by you in the 2nd paragraph of your letter, that the penalties provided in the 11th Section of the same Regulation would be applicable to the case.

November 30, 1827.

To the Calcutta Court of Appeal, dated the 7th December, 1827. No. 465.

The Court of Sudder Dewanny Adawlut have had before them your two letters with their respective enclosures, dated the 16th and 22nd ultimo, relative to the fine imposed by the judge of Burdwan, on an individual named Ramruttun Bose. 1793. Reg. IV. Sec 6.

2. In reply to the question involved in your reference, namely, as to the propriety or otherwise of imposing a fine on a witness, on whom a *subpœna* may not have been served, I am desired to state, that the Court see no reason to depart from the construction laid down in their letter to the commissioner at Moorshedabad, dated the 27th of July, 1814,† that the rules contained in Section 6, Regulation IV. 1793, cannot be considered applicable to the case of a person whose attendance may be required as a witness, but on whom a summons may not have been served.

3. You will be pleased to furnish the judge of Burdwan with a copy of this letter for his information and future guidance.

December 7, 1827.

To the Patna Court of Circuit, dated the 21st December, 1827. No. 466.

The Court of Nizamut Adawlut have had before them your letter, dated the 7th instant, stating your objections to a practice which exists amongst the magistrates of your division, of sentencing the receivers of stolen property to a more severe punishment than that 1818. Reg XII. Sec. 4

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* Superseded by Regulation X. of 1829, Schedule B. Art. 9.

† See construction of this date, No. 172, page 53.

which they award to the thief, and requesting the Court to pass an opinion as to the correctness of the construction put by you on the rule contained in Section 4, Regulation XII. 1818.

2. In reply, I am desired to acquaint you, that the Court are not prepared to narrow the discretion confined to the magistrates by the rule in question, as the offence of receiving stolen property admits of so many shades of difference, that it would be impracticable to define, with any degree of accuracy, under what circumstances a case of that description shall be considered to be of an aggravated nature or otherwise.

December 21, 1827.

No. 467.

1805 Reg II Sec 4 Cl I 1812 Reg V Secs 17 and 20

To the Judge of Zillah 24-*Pergunnahs, dated the* 25*th January*, 1828.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 17th instant, requesting their opinion as to the period in which it is incumbent on a *ryot's* farmer, or dependent *talookdar*, to institute a suit under the provisions of Section 17, Regulation V. 1812.

2. In reply, I am desired to communicate to you the opinion of the Court, that a suit of the nature in question should be instituted within one year from the date of the injury alleged to have been sustained by the illegal sale, conformably to the rules contained in Section 20 of the above cited regulation, and clause 1, Section 4, Regulation II. 1805.

January 25, 1828.

No. 468.

1816 Reg XII

To the Benares Court of Circuit, dated the 8*th February*, 1828.

The Court of Nizamut Adawlut have had before them your letter, dated the 25th ultimo, with its enclosure from the acting magistrate of the southern division of Bundlecund, requesting to be informed whether, under the existing regulations, he is authorized to inflict the full punishment of two years' imprisonment on Musst. Phoolea, convicted of theft, on the ground of her having been twice before convicted, and appearing to be an incorrigible thief.

2. In reply, I am desired to acquaint you, that a sentence of two years' imprisonment may be passed by the acting magistrate in a case of the above nature.

3. You will be pleased to furnish the acting magistrate with a copy of the above opinion for his information and guidance.

February 8, 1828.

No 469

1822 Reg XI Sec 28, Cl 4.

From the Acting Judge of Zillah Jessore, dated the 5*th January*, 1828.

I request you will have the goodness to obtain for me the opinion of the Court of Sudder Dewanny Adawlut on the intent and spirit of clause 4, Section 28, Regulation XI. of 1822. It is there specified, that "If any other person, not being the late possessor of "the *estate sold*," on account of balance of revenue, "shall claim or assert an interest in any "portion of the land delivered to the purchaser, on the plea, that whether included in the "sale or not, it formed no part of the property liable for the Government revenue assessed "on the *mehal* sold, he shall be at liberty to institute a suit for the recovery thereof jointly "against the former possessor of the *mehal* sold and the purchaser."

First. I request to be informed whether such suit, under this clause, shall be decided by a summary or miscellaneous investigation, or whether such claimant must have recourse to a regular suit to recover his claim.

Secondly. When an estate has been sold on account of the public revenue, and the collector has not been able to give possession to the purchaser, from the circumstance of parties asserting a claim to a portion of the land sold, on the plea that it formed no part of it in any way, and consequently the collector has applied by a proceeding to the civil court to put the purchaser in possession, under clause 1, Section 28 of this Regulation: I am desirous of being informed, if a petition should be presented to the judge, previous to his complying with the collector's request, he is at liberty, under the spirit of clause 4, Section 38 of this Regulation, summarily to ascertain the rights of the respective parties, and award possession accordingly; or whether he is compelled to carry the collector's request into execution without listening to the petition of the claimant, leaving him to prosecute his demand by a regular suit.

2. A case similar to the above is now pending before me, and as this clause is not sufficiently explicit, I have deferred complying with the collector's requisition, till I have first obtained the opinion of the Court of Sudder Dewanny Adawlut. The case is simply this: The estate of A was sold on account of balance of public revenue; B became the purcharser, and the collector could not put B in possession, because C, the proprietor of an adjoining estate, came forward and stated his claim to a *mozafat* as belonging to his estate, which had been sold with the estate of A. The collector decided that it belonged to the estate of A, because it was so written in his office so far back as 30 years, but C has proved his possession to this *mozafat* since the year 1801, by various documents, and there is no doubt of the circumstance. The question therefore ensues, Is C to be ousted from this *mozafat*, after retaining undisturbed possession for 25 or 26 years, on the proceeding of the collector, because it might have appertained to the estate of A previous to that time? or is the judge at liberty summarily to ascertain the respective right to possession of A and C, and decide accordingly? Surely the spirit and intent of this clause could never have been intended to convey the meaning, that a person situated as C, (in possession for 25 or 26 years), should only have redress by a regular suit. It does not appear in this case that the collector has been invested with any of the powers of commmissioner, as specified in clause 2, Section 28 of this Regulation, which induced him to determine the right of A to this *mozafat*, and consequently the right of B to possession as purchaser.

To the Acting Judge of Zillah Jessore, in reply to the above, dated the 8th February, 1828.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 5th ultimo, requesting their opinion as to the proper construction of clause 4, Section 28, Regulation XL of 1822.

2. In reply to your first question, as to whether a suit instituted under the clause above-mentioned, should be decided by a summary or miscellaneous investigation, or whether recourse should be had to a regular suit, I am desired to communicate to you the opinion of the Court, that such suit should be regular.

With reference to your second question, I am desired to acquaint you that you should exercise your own discretion, and proceed in such mode as you may deem conformable to the regulations, leaving any party who may be dissatisfied to sue for his remedy by a summary appeal to the provincial court.

February 8, 1828.

No 470

1814.

Reg XXVI Sec 8 Cl 8 and 9

To the Calcutta Court of Appeal, dated the 22*d February*, 1828.

The Court of Sudder Dewanny Adawlut have had before them a letter from your fifth (now fourth) judge, dated the 8th instant, with its enclosures, submitting for the Court's consideration, copies of a letter from the judge of Burdwan, and of the decrees passed by him and the *zillah* court in the case of Chytun Chowdrie, appellant, *versus* Kartick Churn Sircar, respondent, and requesting the Court's opinion thereon.

2. In this case it appears, that Mr. Millett calls in question the legality of the judgment of your court, upon the ground of its not being in conformity with the intent and meaning of Section 3, Regulation XXVI. 1814, the 8th and 9th clauses of which section, he thinks, render it incompetent to a provincial court of appeal to pass a conditional reversal of an appeal from the decision of a *zillah* judge.

3. In reply, I am desired to acquaint you, that the Court see no objection to your order in the abstract, and that, had the judge omitted to issue the notice required by the Court's circular letter, dated the 5th of November 1812, or, the appellant having attended under it, had he refused to hear what the party might have had to allege in excuse for his default, an order from your court, directing the judge to hear the excuse, and if it proved sufficient, to restore the case to the file, would appear to be entirely unobjectionable.

4. I am at the same time desired to observe, that the Court do not by this construction intend at all to interfere with the particular case out of which the reference originated.

5. You will be pleased to furnish Mr. Millett with a copy of this letter for his information and guidance.

February 22, 1828.

No 471

1819

Reg X Sec 67

To the Acting Judge of Zillah 24-*Pergunnahs, dated the* 22*nd February*, 1828.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 18th instant, and its enclosures, submitting the case of certain individuals seized with illicit salt, and soliciting the opinion of the Court, relative to the intent and meaning of Section 67, Regulation X. 1819.

2. In reply, I am desired to acquaint you, that the Court are disposed to be of opinion, that under the rule above cited, the fine should be in proportion to the quantity of illicit salt seized, and not according to the number of persons engaged in the illicit transaction.

3. Your are not however to consider this construction as operating to prevent the exercise of your own discretion, or to exempt you from an adherence, in the particular case, to the rules prescribed for your guidance in the regulation cited by you.*

February 22, 1828.

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* See No. 294, page 210.

To the Acting Judge of Zillah Shahabad, dated the 22nd February, 1827. No. 472.

1813. Reg. VI.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 8th instant, requesting the Court's opinion on a point connected with Regulation VI. 1813, the defendant in a civil process for the summary execution of an award of arbitration under the provisions of Section 3 of the above-mentioned regulation, having put in a plea, that the provisions of the section and regulation above quoted exclusively provide for awards respecting lands and rights dependent on them, and that an award for debts, disputed accounts, and partnership, &c. is not cognizable under that regulation.

2. In reply, I am desired to communicate to you the opinion of the Court, that Regulation VI. 1813, as appears from its preamble relates exclusively to contests and suits respecting lands, and is inapplicable to other matters.

February 22, 1828.

To the Calcutta Court of Appeal, dated the 22nd February, 1828. No. 473.

1793. Reg. V. Sec. 7.

The Court of Sudder Dewanny Adawlut have had before them a letter from your fifth (now fourth) judge, dated the 8th instant, with its enclosures, submitting sundry papers in the cases of Lalchand *versus* Ramruttun Dutt, and Rajchunder *versus* Kumlakaunt Chund, and requesting the Court's opinion, as to whether, in a case of appeal, when a *vakeel* is present, it is necessary or not, previously to dismissing the suit on default, to issue a written notice to the party himself, calling upon him to shew cause for not having proceeded in his appeal.

2. In reply, I am desired to communicate to you the opinion of the Court, that such notice is not necessary in a case in which a *vakeel* is present.

February 22, 1828.

To the Acting Magistrate of Zillah Rungpore, dated the 22nd February, 1828. No. 474.

1822. Reg. VIII.

The Court of Nizamut Adawlut have had before them your letter, dated the 7th instant, with its inclosed copy of a letter from the commissioner of Rungpore, requesting the Court's permission to transfer the case of Mahomed Ali, charged with cutting off the nose and ear of an Assamese boy, from Rungpore to Gwalpara.

2. In reply, I am desired to acquaint you, that the Court cannot sanction the measure recommended, Gwalpara being a place to which the general regulations of Government do not extend, and not being one of those stations contemplated in the provisions of Regulation VIII. 1822.

February 22, 1828.

To the Judge of Zillah Ghazeepore, dated the 7th March, 1828. No. 475.

1813. Reg. VI. 1824. Reg. XV. 1793. Reg. XLIX. 1819. Reg. VIII. Sec. 18, Cl. 5.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 16th ultimo, submitting a copy of the proceedings of this Court relative to certain opium cultivators in your district, with copy of a letter from the Secretary to Government in the Territorial Department, and requesting, under the circumstances stated by you, that the Court would reconsider their orders.

2. In reply, I am desired to forward to you, for your information and guidance, the accompanying copy of a letter, under date the 2d of March 1827,* written by order of this Court to the Patna court of appeal, which letter, as you will perceive, contains the construction which, in the opinion of this Court, should be put upon the provisions of Regulation VII. 1813, when considered with relation to those of Regulation XV. 1824.

3. I am further directed to furnish you with the accompanying copy of a letter to the address of the Patna court of circuit, dated the 13th of July 1827,† shewing the description of suits which, in the opinion of the Court, are properly cognizable under the provisions of Regulation XV. 1824.

4. With reference to your remark, that if without distraint of property an ejectment has actually taken place, in consequence of the *ryot* being compelled to quit by force or intimidation, and his former possession shall be disputed and denied by the *zemindar*, you cannot discern to whom the investigation of such a case would belong; I am desired to communicate to you the opinion of the Court, that either the rules of Regulation XLIX. 1793, or those of Regulation VIII. 1819, would be applicable; the former where the dispossession may have been effected by force, and the latter where those means may not have been resorted to.

5. The declaration contained in the fifth clause of Section 18, Regulation VIII. 1819, that it is illegal to oust or disturb resident cultivators, unless under certain stated circumstances, necessarily implies a remedy in case of the contravention of such rule; and the Court are of opinion, that in the spirit of the enactment cited, such remedy should be afforded by the judge on the summary application of the ejected *ryot*, by an order for his being restored to possession, and his retaining it until the process prescribed by the regulation shall have been observed.

March 7, 1828.

No. 476.
1810.
Reg. IX. Sec. 36. 1819
Reg X.

To the Joint Magistrate of Baraut, dated the 8th April, 1828.

The Court of Nizamut Adawlut have had before them your letter, dated the 28th ultimo, requesting their opinion, as to whether the provisions of Section 38, Regulation IX. 1810, can be considered applicable to native officers in the salt department.

2. In reply, I am desired to communicate to you the opinion of the Court, that those provisions cannot be considered applicable, and that, although there do not appear to be any corresponding provisions in Regulation X. 1819, (which relates to the salt department,) yet that officers in that department are of course amenable to justice for acts of extortion, under the general regulations.

April 8, 1828.

No. 477.
1814
Reg XXIII
Secs. 46 and 73.

To the Judge of Zillah Shahabad, dated the 8th April, 1828.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 10th ultimo, together with its enclosed copy of your Persian proceedings in the case of Bhichook Pandee *versus* Hurrukh Pandee and others, requesting the Court's permission to

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* See construction of this date, page 187, No. 444.

† See construction of this date, page 191, No. 453.

admit a summary appeal from the decision of the *sudder ameen* in the above case, though the proper time for appealing has elapsed.

2. In reply, I am desired to acquaint you, that this reference was wholly unnecessary, inasmuch as by Sections 46 and 73, Regulation XXIII. 1814, you are vested with discretionary power to admit an appeal from the decision of a *sudder ameen*, although the petition may not be presented within the prescribed period, if the appellant shall show satisfactory cause for not having before presented the petition.

April 18, 1828.

To the Judge of Zillah Gorukhpore, dated the 18th April, 1828.

No. 478.

1803 Reg II Sec. 18, Cl 2, & 1805 Reg 7 L

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 2nd instant, requesting their opinion, as to whether the prohibition set forth in the latter part of clause 3, Section 18, Regulation II. 1803, against hearing suits for private claims, has been superseded by the provisions of Regulation II. 1805.

2. In reply, I am desired to communicate to you the opinion of the Court, that notwithstanding the mention of the period of 60 years in the regulation last cited, no claim can now be heard which had its origin beyond the date of the cession, and this without any reference to the mode in which the possession may have been, or may be alleged to have been acquired; and that consequently the rule contained in clause 3, Section 18, Regulation II. 1803, remains in full force.

April 18, 1828.

To the Calcutta Court of Appeal, dated the 18th April, 1828.

No. 479.

1793 Reg X Sec 2

The Court of Sudder Dewanny Adawlut have had before them a letter from your third judge, dated the 25th ultimo, submitting, at the request of the judge of *zillah* Burdwan, for the consideration and orders of this Court, certain documents connected with the case of the Rajah of Burdwan, *versus* Nubkissore Chatoorjea.

2. The reference now submitted involves, the Court observe, two questions. *First*, as to whether a judge is competent, under Section 2, Regulation X. 1796, to offer any objection to an order of a provincial court in the shape of a decree; and *secondly*, whether in cases of default, the vacation should be deducted in calculating the time allowed for the performance of any act.

3. On the first point, I am directed to communicate to you the opinion of the Court, that the regulation above cited was only intended to apply to difference of opinion relative to the proper construction of regulations in miscellaneous matters, and not to the provisions of a decree, the remedy against which, if deemed erroneous by either of the parties interested, consists in appeal or review, to be applied for in the mode prescribed by the regulations.

4. On the subject of deducting established holidays, I am directed to forward to you the accompanying copy of an opinion delivered by the Court on the 24th of February, 1816, in favour of making such deduction in calculating the period allowed for preferring appeals, when the period of appealing may expire during an adjournment of the Court; and

to acquaint you, that the same rule should be applied to cases of default of any other description.*

5. You will be pleased to furnish the judge of Burdwan with a copy of this letter for his information and guidance.

April 18, 1828.

No 480

1793 Reg VIII Sec 51 Cl 2 Sec 63 Cl 1 1821 Reg II Sec 4 1814 Reg XXIII Sec 13 Cl 1

To the Judge of Zillah Jungle Mehauls, dated the 19*th April*, 1828.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 31st ultimo, requesting their opinion on the following points.

First. Is it competent to a *moonsiff* to receive, try, and decide suits for the recovery of rent, or other claim arising from land or other real property, not being a claim to the actual right and title to hold the land or other real property?

Secondly. Is it competent to a *moonsiff* to receive, try, and decide suits brought to recover the penalties leviable from a *zemindar*, *talookdar*, or other person, entitled to receive rent, under clause 2, Section 51, and clause 1, Section 63, Regulation VIII. 1793, for undue exaction of rent, or for a refusal to grant a *dakheleh* or receipt for rent paid?

Thirdly. Is it competent to a *moonsiff* to receive, try, and decide suits brought by a tenant to compel a *zemindar*, *talookdar*, or other person, entitled to receive rent, to refund a sum of money unjustly extorted as rent, or to prove the payment of a sum of money as rent for which no *dakheleh* or receipt has been granted, provided the tenant do not sue at the same time to receive the penalty alluded to in the clauses quoted in the second question?

2. On the first point, namely, the competency of *moonsiffs* to try suits for rent, I am desired to call your attention to Section 4, Regulation II. 1821, the provisions of which you seem to have overlooked, and which expressly authorize the trial of suits for rent by the *moonsiffs*.

3. On the second point the Court observe, that the penalties alluded to in the clauses quoted in the second question are not of the nature of personal damages, such as the *moonsiffs* are prohibited from trying by the concluding part of clause 1, Section 13, Regulation XXIII. 1814, and consequently that there does not appear to be any objection to the institution of suits for the recovery of such penalties in the courts of the *moonsiffs*. The foregoing reply renders unnecessary any observation on the third point submitted to you.

April 19, 1828.

No 481.

1814 Reg XXIII

To the Judge of Zillah Beerbhoom, dated the 2nd May, 1828.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 15th ultimo, requesting the Court's instructions as to the competency of a *moonsiff* to try and determine three several suits between the same parties, the case being the sum of 150 rupees for each of which sum bonds were given on the same day.

2. In reply, I am desired to acquaint you, that there does not appear to be any rule in Regulation XXIII. of 1814, or other enactment, which can be held to prohibit the cognizance of such suits by a *moonsiff*.

May 2, 1828.

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* See C. O. S. D. A. 7th Feb 1831, No 25, p 28, Vol II. Baptist Mission Press Edition.

To the Judge of Zillah Ghazeepore, dated the 9th May, 1828.

No. 482.
1824
Reg. XV.
1793
Reg XLIX.
1810
Reg. VIII.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 3rd ultimo, requesting, under the circumstances therein stated, a further construction of the Court with regard to the provisions of Regulation XV. 1824.

2. In reply, I am desired to acquaint you that the regulation in question has been held to be not applicable to disputes relative to the right of cultivation only, and the Court are of opinion, that all differences between landholders and their tenants or *ryots*, involving the question, whether the landholder can legally oust the tenant or *ryots* from the lands which the latter considers himself entitled to occupy, should come under the provisions of Regulation XLIX. 1793, or Regulation VIII. 1819.

May 9, 1828.

To the Judge of Zillah Jessore, dated the 23rd May, 1828.

No. 483.
1819.
Reg. X.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 15th instant, requesting their opinion on certain points connected with the construction of Regulation X. 1819.

2. In reply to your first question, I am desired to communicate to you the opinion of the Court, that in cases forwarded to the judge by the salt officers, under the 113th Section of the enactment above quoted, regarding illicit manufacture of, salt, &c. the person accused is at liberty to employ a *vakeel*, and to put in a written defence, if he deem that course preferable to pleading personally; and that such written defence should be on stamp paper of the value prescribed for miscellaneous petitions presented in the judge's court.

Secs. 104 and 113.

3. On the second point, I am directed to observe, that the regulation apparently does not provide for cases wherein the defendants are absent or against whom the agent has recorded his opinion of guilty *exparte*; its provisions being confined to an indication of the course of proceeding to be followed by the judge where the person of the defendant is produced; but that it is, of course, the duty of the judge to assist the agent in his endeavours to apprehend any offender, who may have evaded or resisted his process.

4. As to the meaning of the 104th Section, I am desired to communicate to you the opinion of the Court, that it gives the same powers for the apprehension of those charged by the agent to those officers, as the magistrates are authorized to use; in as much as the general magisterial powers, vested in the agents by the section cited, do not appear to be limited by any other provision of the enactment.

May 23, 1828.

Letter from the Officiating Judge of the Moorshedabad Court of Circuit at Rungpore, dated the 15th May, 1828.

No. 484.
1793
Reg. IX Sec 53.
1811.
Reg I Sec 5.
1803.
Reg LIII.
Sec. 6, Cl. 2.

I have the honor to acknowledge the receipt of an extract from the proceedings of the Nizamut Adawlut, under date the 26th April last, observing, that I have stated my concurrence with the *futwa* of the law officer convicting Zubra Roy and three others of *dacoity*, but that I have not passed sentence on them, apparently because I differed from the *futwa* acquitting a fifth prisoner; and directing me to pass sentence under the Regu-

lations on the four prisoners in question, suspending the execution thereof on account of the reference regarding the fifth prisoner.

2. Previously to carrying the above order into effect, I beg most respectfully to submit that it appears to me, from Section 53, Regulation IX. 1793, and Section 5, Regulation I. 1811, that a judge of circuit, in cases similar to that already quoted, is precluded from passing any order, but directed to transmit the proceedings on the trial, with his opinion thereupon, for the final sentence of the Nizamut Adawlut.

To the Officiating Judge of Moorshedabad Court of Circuit at Rungpore, in reply to the above, dated the 6th June, 1828.

The Court of Nizamut Adawlut have had before them your letter, dated the 15th ultimo, stating in reply to the Court's orders of the 26th April last, the opinion you entertain as to your incompetency to pass sentence on the prisoner Zuhra Roy and others, under the provisions of Section 53, Regulation IX. 1793, and Section 5, Regulation I. 1811.

2. In reply, I am desired to communicate to you the opinion of the Court, that under the regulations at large, and particularly with reference to clause 2, Section 6, Regulation LIII. 1803, you are required to pass sentence, as directed in the Court's proceeding under date the 26th of April last; and that the rules quoted by you can be deemed applicable to those prisoners only, with regard to whose guilt you may differ from your law officer.

June 6, 1828.

No. 485.
1808
Reg IX Sec 13

To the Magistrate of Zillah Sylhet, dated the 4th July, 1828.

The Court of Nizamut Adawlut have had before them your letter, dated the 14th ultimo, requesting their opinion on the following point:

Is a magistrate authorized to sentence a person convicted of withholding information of a murder, to both fine and imprisonment, to the extent specified in Section 13, Regulation IX. of 1808, or simply to fine, commutable, if not paid, to imprisonment, within the specified limits?

2. In reply, I am desired to acquaint you, that, in the opinion of the Court, on conviction of the offence in question, the punishment should not exceed a fine of 200 rupees, commutable, if not paid, to imprisonment for six months.

July 4, 1828.

No. 486.
1826
Reg III Sec 4

To the Magistrate of Zillah Beerbhoom, dated the 15th August, 1828.

The Court of Nizamut Adawlut have had before them your letter, dated the 19th ultimo, stating, that an individual, sentenced to a term of imprisonment in the civil jail by the collector in a case of illicit opium, effected his escape, but has since been re-apprehended; and requesting the Court's instructions as to the manner in which you should notice the offence of that individual.

2. In reply, I am desired to observe for your information and guidance, that every escape must involve an attempt to escape; that in the case of the individual alluded to by you, his offence was more strictly an attempt to escape, he having been since re-apprehended; and that consequently he should be dealt with agreeably to the provisions laid down in Section 4 of Regulation III. 1826.

August 15, 1828.

To the Judge of Zillah Allahabad, dated the 12th September, 1828.

No 487.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 18th ultimo, containing the following queries:

1803 & 1793 Reg XXXIV

1st. Are the provisions of Regulation XXXIV. 1803, respecting the legal rate of interests, applicable to loans of grain as well as loans of money, or to the latter only?

Reg IV Sec 6

2nd. Can a witness, who has *evaded* the summons of a civil court, be proceeded against by *dustuk* and fine, supposing that no doubt exists, as to the summons having been carried by the serving *peada* to the actual residence of the witness, and all proper means used to serve it upon him?

3rd. Whether any and what further measures are allowable to enforce the attendance of a witness, who, having been duly served with a summons, has neglected to attend, and *evades* the second process of *dustuk* issued against him?

2. In reply to the first question, I am desired to communicate to you the opinion of the Court, that the provisions of the regulation above cited are applicable to loans of money only; in reply to the second question, that a witness, upon whom a summons may not have been personally and actually served, cannot be proceeded against, either by *dustuk* or fine; and in reply to the third question, that Section 6, Regulation IV. 1793, contains the proper rule of proceeding in such case, namely, the imposition of a fine not exceeding 500 rupees.

September 12, 1828.

To the Benares Court of Circuit, dated the 24th October, 1828.

No 488.

The Court of Nizamut Adawlut have had before them your letter, under date the 27th ultimo, submitting for their consideration and orders, a copy of your correspondence with Mr. Curric, the acting magistrate of the city of Benares, relative to the construction of Section 5, Regulation VI. 1824.

1824 Reg VI Sec 5

1818. Reg XII Sec 3

2. In reply, I am desired to communicate to you the opinion of the Court, that the definition of an heinous offence, contained in the rule cited, applies only to the question of commitment, and that it cannot be held to supersede the rule contained in Section 3, Regulation XII. 1818, which authorizes the magistrate to pass a sentence of two years imprisonment on conviction of theft, where the offender may have been before convicted of the same offence, whatever may be the amount of the property taken in either case; and that consequently Mr. Currie was justified in passing that order in the case which gave rise to the present reference.

3. You will be pleased to furnish the acting magistrate of the city with a copy of this letter for his information and future guidance.

October 24, 1828.

To the Acting Magistrate of Zillah Ghazeepore, dated the 12th December, 1828.

No 489

The Court of Nizamut Adawlut have had before them your letter, dated the 3rd of October last, and its enclosures, requesting the Court's construction of Section 23, Regulation IX. 1807, and submitting the following queries, viz.

1807 Reg IX Sec. 23

1*st*. Whether the court of circuit is competent under Section 10, Regulation IX. 1807, or any other regulation in force, to suspend the execution of a magistrate's order, until the case be decided in appeal under any circumstances, excepting when two judges, after having examined the whole of the magistrate's proceeding, may be of opinion, that further evidence is required, and that the prisoners ought to be admitted to bail, until such additional evidence may be procured, and the magistrate pass a second order?

2*ndly*. Is the court competent to exercise this authority previous to a perusal and consideration of the magistrate's proceedings, and release upon bail prisoners sentenced to imprisonment, on conviction of affrays and other offences, either singly or collectively?

2. In reply, I am directed to answer both the above queries in the affirmative, and to communicate to you the opinion of the Court, that two judges of a court of circuit are at all times competent to direct a magistrate to suspend the execution of his order, and to direct the release of a prisoner on bail, when justice may appear to require that measure, whether they may or may not have examined the proceedings of the magistrate on which such order was founded.

December 12, 1828.

No 490.
1825
Reg II

To the Moorshedabad Court of Appeal, dated the 15*th December*, 1828.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 22d ultimo, suggesting under the circumstances therein stated, that a section and clause should be added to Regulation II. 1825.

In reply, I am desired to communicate to you the opinion of the Court, that the suggested addition to the enactment cited, does not appear to be necessary; and to observe, that the enhanced cost attending the presentation of a petition after a lapse of three months, is merely with reference to such delay, and the probable inconveniences that may attend it; and the Court, to whom the petition for a review may be presented, is competent to reject it on any ground; it not being requisite, according to the rule contained in clause 2, Section 4, Regulation XXVI. 1814, to admit a review, unless the parties preferring applications for the same shall be able to shew just and reasonable ground to the satisfaction of the court, for not having preferred such application within the limited period.

December 15, 1828.

No 491.
1819
Reg VIII Sec 17, Cl 2

To the Judge of Zillah Jungle Mehals, dated the 9*th January*, 1829.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 29th ultimo, stating, that under the provisions of Regulation VIII. 1819, a *putnee talook* was sold by you on the 11th of December for 3,225 rupees, and the required deposit of 15 per cent. made; that as the balance was not paid, the lot was again sold on the 20th of December for 2,468 rupees, and the required deposit of 15 per cent. paid; but, that the balance of the purchase money remaining unliquidated, the *talook* was again put up to sale on the 29th of December, and purchased by the *zemindar* for 1,700 rupees: and, under these circumstances, requesting the opinion of the Court, as to whether the commission of one per cent. leviable for the use of Government, under the provisions of clause 2, Section 17, Regulation VIII. 1819, should be levied on the sums for which the lot was knocked down

on the several days of sale, or merely on the deposits of 15 per cent. made on the first two days, and on the amount for which the lot was finally sold to the *zemindar*.

In reply, I am desired to inform you, that the commission in question should be levied only on the net proceeds of the sale whatever that may be; the several deposits of fifteen per cent. (together with the difference between the first, second, and third sale, claimable from the first and second purchasers, if any sum on this account should have been realized,) being reckoned as part of the gross proceeds.

January 9, 1829.

To the Judge of Zillah Jungle Mehals, dated the 9th January, 1829.

No. 492.

1828. Reg. III Sec. 10, Cl 5.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 2nd instant, requesting to be informed whether the provisions of the fifth clause of Section 10, Regulation III. 1828, are applicable to appeals from all decisions of the revenue authorities, declaring land heretofore held on a rent free tenure liable to assessment; or merely to appeals from decisions which award to Government the right to resume and assess such land.

2. In reply, I am desired to communicate to you the opinion of the Court, that the fifth clause of the section cited is clearly applicable only to appeals from decisions of the Boards of Revenue, or, in other words, only to appeals from decisions which affect the rights of Government.

January 9, 1829.

To the Judge of Zillah Cawnpore, dated the 30*th January*, 1829.

No. 493.

1803. Reg XVIII. Secs. 3 and 7. 1793 Reg. XXVIII. Secs. 3 and 7.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 12th instant, requesting their opinion on the following points:

1st. Whether the circular order, dated 22d September, 1826, has reference to the bond alluded to in Section 3, Regulation XVIII. of 1803, as well as to the bond of arbitration referred to in Section 7 of the same regulation?

2nd. If to both, whether such bonds, being on plain paper, can be received as exhibits in a regular suit, notwithstanding the regulations to the contrary?

3rd. If the bonds, alluded to above, shall not be filed in regular suits except on stampt paper, of what value shall such stampt paper be in case of both bonds?

4th. For what amount is the obligation to be, in the case of the bond under Section 3rd? And, as in the case of the bond of arbitration required by Section 7, the amount of costs, &c. cannot be known until the suit has been decided, for what specific sum ought that bond to be?

5th. As the bond, under Section 3, renders the party bound amenable to *zillah* courts in all suits brought by natives for a sum not exceeding 500 rupees, whether the courts are authorized to receive suits brought by or against a bounden party for sums greater than 500 rupees.

6th. In the event of a suit having been instituted without a bond having been filed under Section 7, and in the absence of the bond required by Section 3, whether the judge is at liberty without further notice to nonsuit? If not at liberty so to do, whether

a petition of plaint being presented, without copy of the bond required by Section 3, and without the original arbitration bond required by Section 7, the judge is to issue notice, or verbally to direct the party or his *vakeel* to enter the said documents within ten days, and on failure nonsuit?

2. In reply, I am desired to communicate to you the following instructions:

1st. In reply to your first question, the accompanying copy of a letter from the Advocate General, under date the 22nd of July 1814,* will suffice to shew you, that it is unnecessary to require the execution of the bond alluded to in Section 3, Regulation XVIII. of 1803.

2dly. In reply to your second, third, and fourth questions, the Court observe, that had not the provisions of Section 11, Regulation I. of 1814, been cancelled by Section 3, Regulation XVI. 1824, the value of the stamp required for the bond prescribed by Section 7, Regulation XVIII. 1803, would have been calculated according to the rule in question, it being easy to estimate the probable amount of costs in each case; but that, there being no existing rule for determining the value of security bonds for a specific amount, as explained in the Court's circular letter, dated the 22nd September 1826,† the security bond required under Section 7 should be on plain paper.‡

3rdly. In answer to your fifth question, I am desired to acquaint you, that the jurisdiction given by the 53d George III. C. 155, Section 107, over British subjects cannot be superseded by the rule cited, and that the courts are authorized to receive suits brought by or against a bounden party for sums greater than 500 rupees.

4thly. On the 6th question I am desired to observe, that you have already been informed of its not being necessary to require the execution of the bond alluded to in Section 3, Regulation XVIII. 1803, and that in the event of plaint being presented to you unaccompanied by the bond prescribed by Section 7, you are authorized to reject it, intimating to the plaintiff or his *vakeel*, either verbally or by a written notice, the necessity of executing such bond; but that you should admit the suit, on the plaint being reproduced accompanied by the requisite document.

January 30, 1829.

No. 494.

To the Secretary to Government in the Judicial Department, dated the 20th February, 1829.

1824 Reg VII. Sec 18. 1819 Reg X.

I am desired by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter, dated the 10th instant, with its annexed extract from the proceedings of Government in the Territorial Department, under date the 30th ultimo, communicated for the Court's construction of clause 4, Section 18, Regulation VII. 1824.

2. With respect to the first point noticed in the letter from the Board of Revenue in the lower provinces, I am desired to state, for the information of the Right Honourable

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* See note Construction No 174, page 54.

† See Construction No 431, page 181, and C. O. S. D. A. No. 86, part 2nd, page 98.

‡ See however Regulation X. 1829, Schedule B.

the Governor General in Council, that the Court concur in the opinion expressed by the Board of Revenue in the central provinces, namely, that the penalty prescribed by clause 4, Section 18, Regulation VII. 1824, cannot, in any case, exceed 500 rupees, whether there be one or more persons convicted of illicit dealing. I am directed to submit at the same time, the accompanying copy of a construction, dated the 22nd of February last,* given by the Court on the same principle, on a reference from the 24-pergunnahs, concerning the provisions of Regulation X. 1819.

3. With respect to the second point, on which there is a difference of opinion among the members of the Board, the Court cannot concur in either of the opinions expressed by them; and in the case put, where the opium forfeited is worth 200 rupees, and the individuals convicted of illicit dealing are four in number, the Court conceive that each individual would be liable to be amerced in the sum of seventy-five rupees to make up, with the value of opium forfeited, the total amount prescribed, namely, 500 rupees.

February 20, 1829.

To the Judge of Zillah Dinagepore, dated the 27th February, 1829.

No. 495.
1793
Reg. III. Sec. 14.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 18th instant, requesting their opinion as to whether a suit, instituted fourteen years subsequent to the date of a *moonsiff's* decree, is subject to the limitations prescribed by Section 14, Regulation III. 1793.

In reply, I am desired to acquaint you, that the cause of action in the case in question must be held to have arisen on the expiration of one year after the date of the decree, and that this Court are not aware of any sufficient reason for excepting the case from the general rule furnished in the section above cited, by which you should be guided accordingly, leaving the party dissatisfied to appeal from your judgment in the ordinary course; and consequently, a suit instituted for the execution of a decree, fourteen years after the date of it, unless satisfactory cause can be shown for the delay, is inadmissible under the rule above cited.

February 27, 1829.

To the Judge of Zillah Tipperah, dated the 13th March, 1829.

No. 496.
1819
Reg VIII.
Sec. 18, Cl 4.
1824.
Reg. XIV Sec. 5.
1799
Reg VII.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 28th ultimo, stating that in clause 4, Section 18, Regulation VIII. of 1819, it is laid down, that "no summary award for arrears shall be considered to warrant the "subjecting real property belonging to the defendant, in such an action, to sale in "execution;" but in Section 5, Regulation XIV. of 1824, it is enacted, that "the "award shall be executed by the judge under the usual process of the civil court;" and, under these circumstances, requesting to be informed, whether real property can be sold in realization of a summary decree of Regulation VII. 1799.

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* See Construction No. 471, page 200.

2. In reply, I am desired to refer you to the words "consistently with the Regulations," contained in Section 5, Regulation XIV. of 1824, and to acquaint you, that the rule in question does not supersede the former provision cited by you, and consequently that real property cannot be sold in execution of a summary decree.

March 13, 1829.

No. 497.
1810
Reg XIII Sec. 2, Cl. 4

Mr. Walpole, in his capacity of *zillah* judge, passed a decree in favour of A, for possession of certain lands with *wasilaat*. This decree was appealed to, and confirmed by, the provincial court. Previous to the execution of the decree, Mr. Walpole was promoted to the court of appeal, and when the decree was about to be executed, a question arose as to the *quantum* of *wasilaat* to be granted. From the order passed by the *zillah* judge as to this question, an appeal was preferred to the Calcutta court of appeal, of which Mr. Walpole had become a member. It thus became a doubt, whether or not Mr. Walpole was competent, with reference to clause 4, Section 2, Regulation XIII. 1810, to give an opinion in the case. The Court of Sudder Dewanny Adawlut however ruled, that Mr. Walpole was competent, the order appealed from as to the *quantum* of *wasilaat* not having been passed by him, and the question for decision not being one on which he had before recorded an opinion.

March 13, 1829.

No. 498.
1825
Reg XX Sec. 4, Cl. 4.

Letter from the Judge of Zillah Cawnpore, dated the 2nd March, 1829.

It appears that the rule of this court, hitherto, has been to receive any and every suit for sums even less than 200 rupees, against residents of cantonments, and these suits have, in the general course, been made over to the law officers as under 500 rupees; the consequence has been that, in one instance lately, the military authorities declined aiding the execution of a writ, even after judgment, on the ground that the case was not cognizable in the civil courts, as being under 400 rupees.

2. The present case is Fukhuroodeen Hyder *versus* Duhan, a shop-keeper residing in cantonment, in which judgment went against defendant in the *pundit's* court, the cause of action being 155 rupees: I therefore request to know whether the execution shall be stopped, on the ground of the incompetency of the court to hear and try it, and the holder of the decree be referred to the military authorities; or whether I shall review the *pundit's* decision.

3. It appears to me that there are two rules in these cases; one, for European British subjects registered as attached to *bazars* and residing in cantonments, British soldiers, officers, *et cætera*; and the second for European foreigners, native soldiers, natives, *et cætera*, registered and residing in cantonments: that with regard to the first, the 4th of Geo. IV. is to be our guide, and 400 rupees the limit: with regard to the second Section 22 of Regulation XX. of 1810, and 200 rupees the limit; and I request to be informed, whether I am right, as I shall put a stop to filing of suits, except the parties conform to Section 24, Regulation XX. of 1810.

To the Judge of Zillah Cawnpore, in reply to the above, dated the 27th March, 1829.

To the Court of Suddor Dewanny Adawlut have had before them your letter, bearing date the 2nd instant, requesting to know whether in the case, Fukhurooddeen Hyder *versus* Duhan, a shop-keeper residing in cantonment, the execution of a decree given in a *pundit's* court shall be stopped, on the ground of the incompetency of the court to hear and try it, or whether the defendant is to be referred to the military authority; or whether the *pundit's* decision in the case is to be reviewed by yourself.

2. In reply, I am desired to acquaint you, that the cause of action in the case cited by you having been under the sum of 200 rupees, and the defendant being, (as the Court conclude he is from your letter,) a person amenable to martial law, the suit was not cognizable by the civil authorities, and that you must therefore consider the *pundit's* decision as null and void, leaving the plaintiff to prefer his suit to the military court of requests.

3. The Court concur in the opinion expressed in the concluding paragraph of your letter, it being conformable with the rule contained in clause 4, Section 3, Regulation XX. 1825, and the provisions therein referred to.

March 27, 1829.

To the Commissioner of Cuttack, dated the 27th March, 1829.

No. 499.
1814.
Reg XXVI.
Sec. 2, Cl. 2.
1819.
Reg. II. Sec 30.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 14th ultimo, requesting their instructions as to the proper course of proceeding with respect to certain decisions which have been appealed to your authority.

2. With reference to the case which was referred for trial to the *sudder ameen*, after a decision had been passed by the collector, I am desired to communicate to you the opinion of the Court, that there appears to be ample ground for the admission of a special appeal, with a view to determine the legality or otherwise of the proceedings; and that, should you be of opinion that they were illegal, you ought to proceed in the mode suggested by yourself, namely, to return the case to the judge, with orders for him to try it on the original plaint.

3. As to the second point the Court direct me to acquaint you, that you should exercise your own discretion; but that, in the Court's opinion, the decision of the two cases alluded to, without reference to the award of the arbitrators, affords sufficient reason to justify the admission of a special appeal in each of them.

March 27, 1829.

To the Judge of the City of Moorshedabad, dated the 3rd April, 1829.

No. 500.
1814.
Reg XXVII
Secs 30 and 25.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 28th February last, submitting the following questions for their opinion, with reference to the provisions contained in Section 30, Regulation XXVII. of 1814.

First. Whether in the event of two defendants in a civil suit choosing to employ the same *vakeel*, under separate *vakalutnamahs*, and each allotting to him the full amount of fees prescribed by Section 25 of the regulation in question, such *vakeel* would be authorized in receiving the same?

Secondly. Whether in the event of two separate *vakeels* being employed by two separate defendants, they would each be entitled to receive the full amount of fees, and, in that case, what amount of fees would be chargeable to the plaintiff, on the dismission of the suit?

2. In reply to your first question, I am directed to communicate to you the opinion of the Court, that where a *vakeel* is employed by two defendants, under separate *vakalutnamahs*, he is entitled to receive from each the full amount of fees prescribed by Section 25, Regulation XXVII. 1814; and in reply to your second question, that where two separate *vakeels* are employed by two defendants, they are each entitled to the full amount of fees, and that the whole amount of fees so due is chargeable to the plaintiff on the dismission of his suit.

April 3, 1829.

No. 501.

1818. Reg. XII. Sec. 5.

To the Officiating Commissioner of Circuit of the 10*th Division, dated the* 16*th April,* 1829.

I am desired by the Court of Nizamut Adawlut to acknowledge the receipt of your letter, dated the 26th ultimo, requesting information as to what course of proceeding is to be adopted towards Mohun Pasban, charged with having escaped from jail, he having before been twice convicted of the same offence.

2. In reply, I am directed to communicate to you the opinion of the Court, that the escape of the individual in question not having been attended by violence, it was not competent to the magistrate, under Section 5, Regulation XII. 1818, to commit him to take his trial for that offence; and that it was the duty of the magistrate to have awarded such punishment as he might deem adequate, not exceeding that prescribed by clause 1 of the section above cited.

3. The Court therefore have been pleased to quash your proceedings, and to direct, that you remand the prisoner to be dealt with by the magistrate as above directed.

April 16, 1829.

No. 502.

1799 Reg. VII. Sec. 15. Cl. 7. 1819 Reg. VIII. Sec. 18, Cl. 4.

To the Judge of Zillah Tipperah, dated the 24*th April,* 1829.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 7th instant, requesting to be furnished with their opinion and orders on the following point: An *yaradar* obtains a farm from a *zemindar* for five years, and enters into agreements with the *ryots* for that term; but after holding it for two years, he becomes a defaulter, is ousted, his engagement with the *zemindar* annulled according to clause 7, Section 15, Regulation VII. of 1799, and a new man obtains the farm for the remaining period of three years. Under those circumstances, is it in the power of the new *ijaradar* to annul the above leases granted by the former *yaradar*, and, to enter into agreements with the *ryots* for the three years which are to come?

2. In reply, I am desired to refer you to the provisions contained in clause 4, Section 18, Regulation VIII. 1819, as meeting the point contained in your reference.

April 24, 1829.

To the Judge of Zillah Jungle Mehals.

No. 503.
1812
Reg V Sec 13.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 25th ultimo, requesting their opinion on the following point: Is a *zillah* judge authorized to take up and investigate, in a summary manner, a complaint preferred by a *zemindar* or his *gomashtah* against the *ryots* for breach of attachment of crops, made under the provisions of Section 13, Regulation V. 1812.

2. In reply, I am desired to refer you to the provisions contained in Section 15, Regulation VII. of 1799, and to acquaint you, that the Court determined on the 9th of August 1806,* that all suits instituted under the section in question shall be tried in a summary manner.

To the Commissioner of Circuit for the 20th Division, dated the 25th April, 1829.

No. 504.
1817
Reg XVII Sec 14, Cl 2.

The Court of Nizamut Adawlut have had before them your letter, dated the 23rd instant, in the case of Government *versus* Sheikh Bukhtaur, charged with giving money to witnesses in a civil suit for the purpose of influencing their evidence.

2. In reply, I am desired to acquaint you, that, adverting to the circumstances stated in your letter, the Court entirely concur with you in opinion, that the *zillah* judge was not authorized, under the provisions of clause 2, Section 14, Regulation XVII. 1817, to commit the above named individual for trial.

3. The Court have therefore been pleased to annul the commitment in the case in question, and they direct that you adopt the necessary measures for the immediate release of the prisoner.

April 25, 1829.

To the Magistrate of Zillah Backergunge, dated the 8th May, 1829.

No. 505.
1824
Reg XV.
1797
Reg XIV. Sec 8.

The Court of Nizamut Adawlut have had before them your letter, dated the 18th ultimo, requesting to be informed if the magistrates are entitled to award costs to parties suing agreeably to Regulation XV. of 1824.

2. In reply, I am directed to acquaint you, that agreeably to Section 8, Regulation XIV. 1797, the criminal courts are authorized to adjudge a reimbursement of costs actually incurred upon any prosecution before them, by either of the parties thereto, in particular instances, wherein they shall consider such reimbursement just and equitable.

May 8, 1829.

To the Officiating Commissioner of Circuit for the 10th Division, dated the 8th May, 1829.

No. 506.
1817
Reg XVII Sec. 2.

The Court of Nizamut Adawlut have had before them your letter, dated the 23rd ultimo, requesting to be informed whether you can pass a sentence of *tushheer* on Musst. Inderwutee, charged with *perjury*, under circumstances stated in your letter.

2. In reply, I am desired to acquaint you, that there does not appear to be any rule exempting females from the punishment in question.

May 8, 1829.

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* See Construction No. 23, page 7.

No. 507.

1816 Reg IV Sec 4 1826 Reg III Sec 2. 1829 Reg I Sec 3.

To the Benares Provincial Court of Appeal, dated the 8th May, 1829.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 15th ultimo, annexing copy of a letter from the acting judge of the Southern Division of Bundlekhund, requesting the Court's opinion relative to the competency of commissioners of circuit to exercise under Section 3, Regulation I. of 1829, the powers vested in judges of circuit by Section 4, Regulation IV. of 1816.

2. In reply, I am desired to refer you to Section 9, Regulation III. 1826, which you appear to have overlooked, by which the control of the civil jails is vested in the magistrates, and by which, consequently, the duty alluded to in Section 4, Regulation IV. 1816, was transferred from the judges of the provincial court to the judges of circuit.

3. You will be pleased to furnish the acting judge of *zillah* Allahabad, with a copy of the above remark, for his information and guidance.

May 8, 1829.

No. 508.

1828. Reg III. 1819. Reg II

To the Acting Judge of Zillah Purnea, dated the 22nd May, 1829.

I am desired by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter, dated the 11th instant, requesting to be informed whether you should forward to the Commissioner appointed under Regulation III. of 1828, any suits of Regulation II. 1819, pending in your Court.

In reply, I am desired to acquaint you, that the suits in question should be retained in your own file, the district of Purnea not having been enumerated in the resolution of Government, under date the 19th June last, as one of those subject to the jurisdiction of a special commissioner appointed under Regulation III. of 1828.

May 22, 1829.

No. 509.

1814 Reg XXIII. Sec 52 1825 Reg VII Sec 3

To the Acting Judge of Zillah Allahabad, dated the 29th May, 1829.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 12th instant, requesting to be informed, whether the courts are authorized to employ their *nazirs* in the attachment and sale of personal property for the purpose of realizing the amount of fines, or of decrees regular and summary; and if so, whether the *nazirs* in such cases are entitled to receive a commission on the proceeds of the sales, in the same manner as *moonsiffs*, under Section 52, Regulation XXIII. 1814.

On the first point I am directed to refer you to the provisions of Section 3, Regulation VII. 1825, wherein you will find recognized the practice alluded to by you, of employing the *nazirs* in the attachment and sale of property; but the Court are of opinion, that those officers are not entitled to receive any commission on the proceeds of such sales, the rule cited by you with regard to *moonsiffs*, who are not, in the discharge of their ordinary functions, ministerial officers of the courts, not being analogous to the case in point.

May 29, 1829.

To the Dacca Court of Appeal, dated the 5th June, 1829.

No. 510.

Rules for distribution of the business of Provincial Courts, dated 14th January, 1819.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 28th ultimo, stating that the distinction of senior and second judges being abolished by Regulation III. 1829, the rules for the distribution of business, under date January 14th, 1819, issued by the Sudder Dewanny and Nizamut Adawluts, are no longer applicable to the present constitution of the Court; and requesting other instructions in the room of those rules.

2. In reply, I am desired to acquaint you, that the rules to which you refer were framed chiefly with reference to the duties formerly required of the judges in their capacity of judges of circuit; that no fresh instructions appear necessary; and that you should adopt such rules and make such arrangements as may be most convenient and conducive to the prompt and efficient discharge of the business of your office.

June 5, 1829.

To the Acting Magistrate of Zillah Allahabad, dated the 19th June, 1829.

No. 511.

1817 Reg XX Sec. 10, Cl. 17. 1816 Reg XVII.

The Court of Nizamut Adawlut have had before them your letter, dated the 26th ultimo, requesting to be informed whether you are authorized under clause 17, Section 10, Regulation XX. 1817, to award a per centage to your *cutwal* on the sum of 26,000 rupees found by him in searching certain houses; and if not, whether you are at liberty to apply for a reward being granted to that officer under the provisions of Regulation XVII. 1816.

2. In reply, I am desired to communicate to you the opinion of the Court, that the *cutwal* is not entitled to a per centage under the enactment cited by you; but that you are of course at liberty to make any recommendation in his favour to the commissioner of circuit, by whom, in his capacity of superintendent of police, it will be determined whether that individual is entitled to a reward for meritorious service.

June 19, 1829.

To the Commissioner of Circuit for the 12th Division, dated the 17th July, 1829.

No. 512.

1807. Reg IX. Secs 4 and 6. 1806 Reg II. Sec 2.

The Court of Nizamut Adawlut have had before them your letter, dated the 29th ultimo, suggesting that a rule of practice be issued by the Court, stating the extent of the powers vested in a general *mokhtar* to act for another.

2. In reply, I am desired to acquaint you that the Court do not consider any rule of practice to be requisite on the subject, and to refer you to the provisions contained in Sections 4 and 6, Regulation IX. 1807, and Section 2, Regulation II. 1806, which clearly recognize the admission of general *mokhtars*; but the Court observe that, in admitting or rejecting this description of agent, much must of course be left to the discretion of the local authority, according to the particular circumstances of each case.

July 17, 1829.

No. 518.

Regarding the power of acting on petitions of appeal forwarded by dawk.

To the Commissioner of Circuit of the 15th Division, dated the 17th July, 1829.

The Court of Nizamut Adawlut have had before them your letter, dated the 30th ultimo, requesting the opinion of the Court as to whether you are authorized to act on petitions of appeal received by dawk from the different stations, unaccompanied by a power of attorney.

2. In reply, I am desired to communicate to you the opinion of the Court, that though you are at liberty to call for the proceedings of a magistrate in any case, from whatever source your information may have been derived, whenever such measure may appear to you necessary for the ends of justice, yet that a party is not regularly entitled to have his petition attended to, unless presented by himself in person, or by his representative duly authorized.

3. The Court direct me to add that, notwithstanding the inconvenience pointed out by you, and which doubtless may occasionally occur under the existing system, it would be objectionable to admit so lax a mode of presenting petitions as transmission by dawk; nor, in the Court's opinion, would the adoption of the method suggested by you to facilitate petitioning, by requiring the authentication of the magistrate, be at all necessary or advisable.

July 17, 1829.

No. 514.

1814. Reg. XXIII. Sec. 8. Cl 2. and Sec. 69.

To the Dacca Court of Appeal, dated the 24th July, 1829.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 26th ultimo, suggesting that some provision be made, empowering you to nominate persons to officiate for *sudder ameens*, who may be absent on leave.

2. The Court conclude that you refer to your power of confirming the temporary nominations made by the judges within your jurisdiction of persons to officiate during the occasional absence of the permanent incumbents; but they observe, that as you are already vested with the power of confirming permanent appointments to any vacancies that may occur, there can be no objection to your exercising the same authority in case of a temporary nomination.

3. I am desired to add, that the rule cited by you in the third paragraph of your letter, namely, clause 2, Section 8, Regulation XXIII. 1814, may be considered applicable to temporary officiating *moonsiffs*.

July 24, 1829.

No. 515.

1823 Reg VI.

To the Judge of Zillah Jessore, dated the 24th July, 1829.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 15th instant, requesting the Court's construction of Regulation VI. 1823, as to whether the engagement executed by parties applying for possession of indigo crops, under the provisions of clause 9, Section 3 of the above enactment, can be enforced under the summary award.

2. In reply, I am desired to answer your question in the affirmative, and to acquaint you, that the summary decree should contain a provision for the payment, by the party cast, of the sum specified in his engagement. In the event of the amount not

being paid, it should be realized by the process prescribed for giving effect to summary judgments; and, with reference to the remark contained in the third paragraph of your letter, I am desired to observe, that the case is not altered by the fact of the party cast being British born subjects, such individuals being, by Section 107, Chap. 155, 53rd George III. declared amenable, equally with natives, to the local courts of civil judicature.

July 24, 1829.

To the Commissioner of Circuit for the 13*th Division, dated the* 24*th July*, 1829.

No. 516.
1821.
Reg. III.
Secs. 2 and 3.
1807
Reg. IX. Sec. 20.

The Court of Nizamut Adawlut have had before them your letter, dated the 22nd of May last, with its enclosure from the magistrate of *zillah* Rungpore, explanatory of his reasons for employing the law officers attached to his court in the manner alluded to in your letter of the 30th of April.

2. In reply, I am desired to communicate to you the following remarks for the information and guidance of Mr. Smith, to whom you are requested to furnish a copy of the same.

3. Independently of the inexpediency of referring every description of criminal case to the law officers for investigation and report, as unnecessarily occupying valuable time which would be much more profitably employed in the transaction of civil business, the Court observe, that the practice is illegal, and not warranted by the rule contained in clauses 2 and 3, Section 3, Regulation III. 1821.

4. The latter clause declares the law officers to be authorized to exercise the same powers as those vested in the assistants to the magistrates by Section 20, Regulation IX. 1807; and those powers, as declared in the concluding part of the same clause, are confined to the trial and decision of trivial cases, and cannot be construed as conveying to such law officers authority to investigate and report upon any description of cases which they are not ultimately competent to decide.

5. Where this practice generally adopted, the Court further observe that it might be the occasion of much obvious impropriety, and that the same law officer, who investigated and reported upon a case, might frequently be called upon to furnish a *futwa* as to the guilt or innocence of the prisoner on his trial before the court of circuit.

6. It may of course occasionally, (though the Court would suppose rarely,) happen, that a case, apparently trivial, may, on investigation, turn out to be of a serious nature; in which event it would be necessary for the law officer, to whom the case had been sent for trial and decision, to return it to the magistrate, unaccompanied however by any opinion as to the merits of the case; and the Court are, upon the whole, clearly of opinion that Mr. Smith's view of the existing rules on this subject is erroneous, and that the magistrates are authorized to refer such cases only to their law officers, as are of a trivial nature, and admit of their being finally disposed of by those officers.*

July 24, 1829.

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* Communicated on the same date to the several commissioners of circuit, for their information, and that of the magistrates.

No. 517. *From the Commissioner of Circuit for the 20th Division, dated the 21st July,* 1829.

1818 Reg VIII Sec. 9, Cl 2.

An instance having come to my notice, in which a magistrate, on the occasion of his requiring a prisoner charged with being a person of bad character to furnish security for his good conduct for the term of three years, ordered, that in the event of the prisoner's failing to give the security, on the expiration of, or within one year, from the date it was required of him, the proceedings should then be laid before the commissioner of circuit.

2. Now it appears to me that the latter part of the above order was contrary to law, and that according to clause 2, Section 9, Regulation VIII. 1818, the proceedings, in all cases of prisoners in confinement under requisition of security for their good behaviour, for any period exceeding twelve months, must be laid before the court of circuit, at the sessions next ensuing after passing of such order; and I therefore request the superior Court will be pleased to inform me whether my construction of the clause in question is correct, or otherwise.

To the Commissioner of Circuit for the 20th Division, in reply to the above, dated the 7th August, 1829.

The Court of Nizamut Adawlut have had before them your letter, dated the 21st ultimo, bringing to the Court's notice an irregular order passed by a magistrate in the case of a prisoner confined under requisition of security, and requesting the Court's construction of clause 2, Section 9, Regulation VIII. 1818.

2. In reply, I am desired to communicate to you the opinion of the Court, that your construction of the provision in question is correct, and that the proceedings in all cases of prisoners in confinement under requisition of security by a magistrate for their good behaviour, for any period exceeding twelve months, must be laid before the commissioner of circuit at the sessions next ensuing after the passing of such sentence.

August 7, 1829.

No 518. *To the Commissioner of Circuit for the 7th Division, dated the 7th August,* 1829.

1817 Reg XVII.

The Court of Nizamut Adawlut have had before them your letter, dated the 14th ultimo, with its Persian enclosures and copy of the correspondence which has passed between yourself and the acting magistrate of Allahabad in the case of Rummun Lal, charged with the embezzlement of public money.

2. In reply, I am directed to communicate to you the opinion of the Court, that your instructions to the acting magistrate were correct and proper; that under the circumstances of this case the acting magistrate would have evinced a much sounder judgment had he awaited the result of the acting judge's reference to this Court; and that clause 2, Section 14, Regulation XVII. 1817, cited by him in justification of his proceeding, is not applicable, that rule applying only to cases of perjuries committed by parties in a civil suit actually pending before a judicial authority.

3. I am directed to add, that by my letter written to the late acting judge on the 27th of March last, instructing him to commit Rummun Lal and the other individuals implicated to take their trial before the commissioner of circuit for the division on the charge of fabrication or embezzlement, or on both of those charges, should it appear to him from the proceedings already held, that there was sufficient evidence on which to found their conviction, it was intended that Mr. Brown should have recourse to this proceeding in his capacity of acting magistrate, and not in his judicial capacity.

August 7, 1829.

To the Judge of Zillah Beerbhoom, dated the 21st August, 1829.

No. 519.
1799
Reg. VII.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 10th instant, requesting to be informed whether the present practice of receiving summary petitions and issuing process against defaulting cultivators for arrears of rent however small the amount, is to be permitted to continue, and whether you are at liberty to dismiss the whole of such summary suits now pending.

2. In reply, I am desired to acquaint you that, under the existing regulations, a person to whom arrears of rent may be due is authorized to proceed against the defaulter, either by distraint of his property or attachment of his person; and that he may exercise the option allowed him in such mode as he may conceive most convenient to himself.

3. You are consequently not at liberty to reject summary suits instituted under Regulation VII. 1799, whatever may be the amount sued for, and you will be pleased to proceed in due course to the adjudication of those now pending.

August 21, 1829.

Extract from a letter from the Judge of Mymunsingh, dated the 3rd August, 1829.

No. 520.
1793.
Reg. XIII. Sec. 8.

PAR. 1. May I request the favour of your obtaining for me the superior Court's opinion on the following queries:

1st. Whether under Section 8, Regulation XIII. 1793, *sudder ameens* and *moonsiffs* are included among the native officers directed not to interfere, publicly or privately, in any cause or matter depending before the court (judge's) to which they may be attached?

2nd. Whether there is any exception in the event of the matter or cause being before any other court, but that of the judge, or the court over which the *sudder ameens* or *moonsiffs* may preside?

3rd. Whether the circumstance of the cause or matter being pending in appeal from the orders of the lower courts, either before the Sudder Dewanny Adawlut, court of appeal, judge's court, or the court of *sudder ameen*, (more particularly in appeal before the judge's court, to whose authority they may be subordinate,) exempts them from the prohibition in the section quoted?—In other words, are they allowed to interfere, publicly or privately, in any cause or matter originally decided or brought to a hearing in the judge's court, but which may be pending in appeal before the appellate or superior Court,

or which may be pending in appeal before the judge's court from decisions passed by the register, *sudder ameens* or *moonsiffs*?

To the Judge of Zillah Mymunsingh, in reply to the above, dated the 21st August, 1829.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 3rd instant, requesting the Court's construction of Section 8, Regulation XIII. 1793, and submitting various observations in relation to that subject.

2. In reply, I am desired to communicate to you the opinion of the Court, that *sudder ameens* and *moonsiffs* are not included in the prohibitory provisions of the rule cited by you.

August 21, 1829.

No. 521.

1829. Reg II. Sec 3. 1821 Reg III. Sec 5.

To the Commissioner of Circuit for the 12th Division, dated the 4th September, 1829.

I am desired by the Court of Nizamut Adawlut to acknowledge the receipt of your letter, dated the 17th ultimo, with its annexed copy of a letter from the acting joint magistrate of Monghyr, requesting the Court's opinion as to the amended provisions contained in Section 3, Regulation II. 1829.

2. In reply, I am directed to acquaint you that the Court fully concur with you in opinion, that the provisions in question were not intended to rescind the rule contained in Section 5, Regulation III. 1821, and that an appeal from the order of a magistrate is still admissible under Regulation II. 1829, though more than a month of thirty days may have elapsed from the date of the order, if it can be proved that the petitioner was prevented by circumstances totally beyond his control from presenting his petition within the prescribed period.

September 4, 1829.

No. 522.

Giving bribes to the *umlah* of a public officer is punishable as a misdemeanor

To the Commissioner of Circuit for the 13th Division, dated the 4th September, 1829.

The Court of Nizamut Adawlut have had before them your letter, dated the 25th ultimo, requesting their opinion as to whether a native, giving bribes to the *umlah* of a public officer for corrupt purposes, is liable to be prosecuted for so doing.

2. In reply, I am desired to acquaint you that the act in question is clearly a misdemeanor, both according to the English and Mahomedan law, and, though not specifically mentioned in the regulations, the individual committing it is unquestionably liable to a criminal prosecution.

September 4, 1829.

No. 523.

1819 Reg VIII.

On the question, as to whether a farmer under the court of wards has the right of bringing to sale dependent *talukhs* under Regulation VIII. 1819, the Court, on the 4th September, 1829, observed, that the collector, (or more strictly speaking the court of wards,) stands in the place of the *zemeendar*; and that a *surburakar*, appointed by the collector, has the same powers as a *surburakar* appointed by the *zemeendar*, (were he of age,) would have, and is answerable to the collector for every thing he does in the management of the state; and that a farmer, under a lease from the collector, being responsible to the collector

for nothing but the rent he has agreed to pay, stands exactly in the same predicament as a farmer under a lease from a *zemeendar* ; and that it had been held by the Court, (see construction, dated 7th September, 1827,*) that farmers holding of proprietors cannot exercise the privilege given to the latter by Section 8, Regulation VIII. 1819.

2. The reason which induced the Court to adopt that construction was, that the enactment cited, specifying only proprietors, could not be held to give the large powers it confers to any but proprietors.

September 4, 1829.

No. 524.

The following question being proposed to the Court, "An individual, whose security has been tendered in a cause about to be appealed to the King in Council, has petitioned against the acception by this Court of the security so tendered. The document, intimating his willingness to become the security, was delivered into court by the appellant, who claims it to be restored to him, upon the ground of his actual presentation of it; against this the security protests, and prays, the document being his, and now cancelled by him, that he, and not the appellant, may receive it under these circumstances what course should be pursued?" the majority of the Court declared their opinion, that the documents in question should be returned to the appellant, as the party by whom it was filed, a copy of the same being retained in the office; and the petitioner's application was rejected accordingly.

September 4, 1829.

No. 525.
1827
Reg V

To the Commissioner of Circuit for the 12*th Division, dated the* 4*th September,* 1829.

The Court of Nizamut Adawlut have had before them your letter, dated the 7th ultimo, and its enclosures, referred on the ground of the collector's having refused to give effect to an order issued by you under Regulation V. 1827.

2. In reply, I am desired to acquaint you, that the Court can discover no rule in the existing regulations which could be construed to authorize an order of attachment by a commissioner of circuit; and that consequently *it is the opinion of the Court, that* you exceeded your powers in issuing to the collector the instructions out of which your reference originated.

September 4, 1829.

No. 526.

The Court determined on the 25th September 1829, that the concurring opinion of two judges, who agree in all points of the decision, is final and conclusive, though it differ from the opinions of two other judges who do not agree with each other.

September 25, 1829.

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* No. 461, p. 196.

No. 527.
1819.
Reg. II. Sec. 30.

To the Judge of Zillah Tipperah, dated the 30th October, 1829.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 16th instant, requesting the Court's construction of Section 30, Regulation II. 1819.

2. In reply, I am desired to acquaint you, that the Court entirely concur with you as to the question referred, and that in conformity with Section 30, Regulation II. 1819, suits of every description, in which *lakheraj* land is in dispute, are properly cognizable by the collectors, and not those only in which Government is a party.

3. You are requested to communicate this construction to the collector of Tipperah, and in the event of his still refusing to entertain the suits referred to him, you will inform the parties concerned that they are at liberty to appeal against his order to the commissioner of revenue for the 15th division.

October 30, 1829.

No. 528.
1811
Reg. VII Sec. 5.

To the Commissioner of Circuit of the 11th Division, dated the 30th October, 1829.

The Court of Nizamut Adawlut have had before them your letter, dated the 23rd ultimo, with its enclosed copy of correspondence between yourself and the magistrate of Behar, in the case of Fakeerchund.

2. With reference to the point at issue between yourself and Mr. Jackson, I am desired to communicate to you the opinion of the Court, that a commissioner of circuit is not at liberty in the case of a commitment made by a magistrate, to punish the prosecutor for a groundless and malicious complaint, though he is doubtless competent to direct the commitment of the prosecutor, and his witnesses for perjury, in the event of his seeing reason to believe that a false accusation has been preferred on oath, and that an attempt has been made to substantiate it by false evidence.*

October 30, 1829.

No. 529.
1821.
Reg. III Sec. 2.
1825
Reg IV.

To the Magistrate of Zillah Purneah, dated the 20th November, 1829.

The Court of Nizamut Adawlut have had before them your letter, dated the 6th instant, requesting to know whether an assistant to the magistrate, vested with special powers described in Section 2, Regulation III. 1821, is competent to direct the taking of *mochulkas* and security under the provisions of Regulation IV. 1825.

2. In reply, I am desired to communicate to you the opinion of the Court, that the powers in question may be exercised by assistants so circumstanced.

November 20, 1829.

No. 530.
1811.
Reg VII Sec 5.

Letter from the Commissioner of Circuit of the 11th Division, dated the 28th October, 1829.

With reference to my letter to your address, dated the 23d ultimo, I beg to inform you that I was not then aware, that a reference on the same subject was made on the 12th May, 1809, to the Court of Nizamut Adawlut, by Mr. Hawkins, then 2nd judge of the

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* See No 530, in this page

Patna court of circuit, and that the latter court were informed in reply by the superior Court on the 24th of that month, "that as the magistrates are expressly authorised by "Section 10, Regulation IX. 1793, to punish litigious, vexatious, or groundless complaints "by fine or imprisonment, the Court are of opinion that a similar power may be exercised "by the courts of circuit in particular cases appearing to require it."

To the Commissioner of Circuit for the 11th Division, in reply to the above, dated the 27th November, 1829.

I am desired by the Court of Nizamut Adawlut to acknowledge the receipt of your letter, dated the 28th ultimo, in continuation of your former reference on the subject of the competency of a court of circuit to punish litigious and groundless complaints by fine and imprisonment.

2. In reply, I am directed to acquaint you, that the construction now cited by you is not at variance with that communicated to you in my letter, under date the 30th ultimo;* and that the former has reference to appealed prosecutions brought by private individuals before the court of circuit at the *sudder* station, and the latter to cases of commitment tried before a commissioner of circuit, in which the very fact of the commitment having been made by the magistrate affords sufficient presumption that their complaint is not groundless or malicious.

November 27, 1829.

No. 531. 1799. Reg VII. 1819 Reg VIII.

At a Court of Sudder Dewanny Adawlut held on the 27th day of November, 1829, it was determined, that according to the intent and meaning of Regulation VII. 1799, Regulation VIII. 1819, and the constructions of this Court, bearing date the 27th of June and the 14th of November, 1809, a *sudder putneedar* cannot exercise the same authority as is possessed by a *zemindar*, with respect to his under tenants, of selling the tenure of his *dur-putneedar* without previous application to the Court.

November 27, 1829.

To the Commissioner of Cuttack, dated the 4th December, 1829.

No. 532. 1825. Reg VII.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 20th ultimo, with its enclosed reference from the judge of Cuttack, on the subject of the construction of Regulation VII. 1825, contained in this Court's circular instructions, bearing date the 6th of June, 1828.†

2. In reply, I am desired to acquaint you, that those instructions did not refer to the case of a purchaser who refused to take possession of the property purchased within a reasonable period after possession has been tendered to him; and that the purchase money should, in such case, be paid to the decree-holder; the purchaser being warned that he must abide by the consequences of refusing to take possession.

December 4, 1829.

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* No. 528 in the preceding page.

† See Cir. Or. S. D. A. No. 1, page 1, vol. II.

No. 533.
1822.
Reg IX. Sec 2.

To the Commissioner of Circuit for the 12th Division, dated the 18th December, 1829.

The Court of Nizamut Adawlut have had before them your letter, dated the 4th instant, requesting instructions on the following points:

First. Suppose persons from the Morung or other independent state, (that is those not coming under the meaning and extent of Section 2, Regulation IX. 1822, defining what classes of persons are subjects of the British Government,) shall enter the Company's territories, and rob and plunder and commit other heinous crimes, and shall make their escape beyond the Company's boundary line; can such persons, if given up by the foreign state, be tried before our courts?

Secondly. Suppose a native subject of the British Government shall commit a heinous crime, and escape beyond the Company's territory, but shall be delivered up by the independent state; is any reference necessary previously to the magistrate's proceeding to try him before his court?

Thirdly. If a person, not being a subject of the British Government, shall be accused of a crime of a heinous nature, and seized in the Company's provinces; can he be tried without any reference to Government?

Fourthly. Is the written confession of a prisoner, taken down in a foreign state, before he has been delivered up by that state, legal or not?

2. I am desired to answer your three first questions in the affirmative, and to observe with respect to your second and third, that the Court conclude your meaning to be that the crime in the former case was committed beyond, and in the latter case within the Company's territory.

3. Previously to answering your fourth question, the Court desire me to request that you will define more distinctly what meaning you attach to the terms "legal confession."

December 18, 1829.

No. 534.
1819
Reg. II.
1828.
Reg. III Sec. 2, Cl. 1.

To the Special Commissioner for the Patna Division, dated the 1st January, 1830.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 18th November last, requesting their opinion in a suit appealed from the decision of the collector and Board of Revenue, and tried by the late third judge of the Patna provincial court under the provisions of Regulation II. 1819.

2. In reply, I am desired to observe as follows: By clause 1, Section 2, Regulation III. of 1828, suits for the resumption of lands held rent-free, in districts in which a commissioner has been appointed under that Regulation, can only be finally determined by the commissioner.

3. By clause 4 of the same section, all such suits which may be pending in the ordinary courts are directed to be transferred to the commissioner; and by the same clause, it is expressly provided that no appeal shall lie to any established courts of judicature from any decision that has been or shall be passed by a Board of Revenue, or a collector, previously to, or pending the appointment of a commissioner.

4. By those rules, therefore, the Court consider, that they are precluded from admitting the appeal in the case referred to, and they direct me to communicate to you their opinion that clause 6 of Section 4 should be considered as authorising you to admit an appeal

from the decree of the Patna provincial court; otherwise, the Court observe, the party deeming himself aggrieved by that decree would be deprived the right of appeal which was open to him prior to the passing of that regulation.

January 1, 1830.

To the Magistrate of Zillah Purneah, dated the 1*st January*, 1830.

No. 585.
1824
Reg. X.
Sec. 3. Cl. 1.
1829.
Reg. I. Sec. 7.

The Court of Nizamut Adawlut have had before them your letter, dated the 23rd ultimo, requesting the Court's opinion as to whether a magistrate is competent under Regulation X. 1824, modified by Section 7, Regulation I. 1829, to take evidence on oath of persons supposed to have been concerned in an affray attended with homicide and severe wounding.

2. In reply, I am desired to communicate to you the opinion of the Court, that affray not being enumerated in clause 1, Section 3, Regulation X. 1824, as one of the offences which a magistrate is authorized to tender a pardon to the persons concerned in, the evidence of participators in a case of affray is not admissible against other individuals implicated in the same offence.

January 1, 1830.

To the Judge of Zillah Cawnpore, dated the 1*st January*, 1830.

No. 536.
1808.
Reg. XIII.
Sec. 11. Cl. 2.
1814
Reg. XXVI. Sec. 2,
Cl. 1 and 4.
1796.
Reg. X. Sec. 2.
1803
Reg. XXII. Sec. 2.

The Court of Sudder Dewanny Adawlut have had before them your letter, soliciting the Court's opinion on the following questions:

Firstr Can a judge carry into execution his own decree on a first appeal from a register's or *sudder ameen's* or *moonsiff's* court, before the expiration of three months, and without requiring security under clause 2, Section 11, Regulation XIII. 1808, from the party in whose favor he may have decreed? Or must he wait three months, and allow the party, against whom the award may be, the benefit of the period limited for the admission of appeals?

Secondly. If a decree passed on a first appeal is not to be executed until the three months allowed for special appeals be expired, may it not, nevertheless, be executed on the party holding the decree, if not in possession, giving security under clause 2, Section 11, Regulation XIII. 1808?

Thirdly. With reference to clause 4, Section 2, Regulation XXVI. 1814, if a provincial court, or other competent court pass an order admitting a special appeal, and yet it shall appear that their order was passed on other grounds than those stated in clause 1, Section 2, Regulation XXVI. 1814, is it competent to the judge, against whose decision the special appeal may have been admitted, to refer the subject to the Sudder Dewanny Adawlut, as an appeal upon the construction of clause 1, Section 2, Regulation XXVI. 1814?

2. In reply to your first and second questions, I am desired to communicate to you the opinion of the Court, that in all cases, in which an appeal is allowed by the regulations, the decree-holder should not be put in possession without furnishing security to abide by the ultimate award, until after the period allowed for the appeal shall have elapsed: but that possession may, of course, be awarded on the tender of such security, under clause 2, Section 11, Regulation XIII. 1808.

3. To your third question, I am desired to furnish a reply in the negative, as a reference by the judge, under such circumstances, would be placing himself in the light o an advocate of one of the parties of the suit.

January 1, 1830.

No. 537.
1814
Reg. XXVI.
Sec 20, Cl. 3.

On the 8th of January, 1830, the Court of Sudder Dewanny Adawlut resolved, that exhibits filed along with petitions for the admission of special appeals, under clause 3, Section 20, Regulation XXVI. 1814, are not subject to the payment of a fee on being filed.

January 8, 1830.

No. 538.
1810.
Reg XIII.
Sec. 6, Cl. 3.

The following question having been proposed to the court: "*A* obtains a decree in "the *zillah* court against *B*, who appeals to the provincial court. The judges of the "latter call for a *bewoosteh*, which is furnished by the acting *pundit* of the court; and "upon this *only* the *zillah* decision is reversed. *A* appeals to the Sudder Dewanny "Adawlut, where the *bewoosteh* given (as above) appears to be at variance with the "*shasters* and inadmissible, but the *evidence* is deemed sufficient to establish the "right of *B*: on this *evidence* the reversal of the *zillah* decision is confirmed, the "*bewoosteh* of the provincial court being rejected. Must the proceedings be sub-"mitted to another judge of this court? or is the judgment given *thus*, by *one* affirming "judge, final?" the Court determined that under all the circumstances of the case, and especially the rejection by the sitting judge of the law opinion delivered in the Court below, it was necessary that the case should be sent to another judge for his concurrence.

January 29, 1830.

No. 539.
1793.
Reg. XIII. Sec. 11.

To the Commissioner of Circuit for the 13th Division, dated the 26th February, 1830.

The Court of Nizamut Adawlut have had before them your letter, dated the 12th instant, requesting the Court will determine what a magistrate ought to do in the event of an individual presenting a petition in court, stating that he paid 200 rupees to a private servant of his (the magistrate's), for an official situation, who had failed to procure the appointment, and also to refund the money.

2. In reply, I am desired to acquaint you, that the Court cannot concur with you in opinion, that the charge should be investigated and decided agreeably to Section 11, Regulation XIII. of 1793, the provisions of that rule being exclusively applicable to the case of a private servant employing his influence with his master in the decision of a suit pending before the court.

3. The Court merely deem it necessary to add, that the magistrate should exercise his discretion in passing orders on the occasion of any petition being presented to him of the nature referred to by you, and that the petitioner will of course, if dissatisfied with his orders, be at liberty to appeal to your court.

February 26, 1830.

No. 540.

On the question, "as to whether a decree against the guardian of a minor can be "executed to the detriment of a farmer, holding a lease of the estate decreed under a "*pottah* from the court of wards; the minor having been acknowledged by the court of "wards as the adopted son of the deceased *malik*, but the asserted adoption having been "disproved in the courts, and the claim maintained upon it set aside; and the decree-"holder petitioning to oust the farmer holding the lease as above, and to be put in posses-"sion of the land free from such engagement:" the Court were of opinion that the lease should stand, supposing absence of collusion.

February 26, 1830.

To the Judge of Zillah Backergunge, dated the 19*th March*, 1830.

No. 541.

1799 Reg V Sec 7 1803 Reg III Sec. 16. Cl. 7

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 6th instant, requesting the Court's instructions as to the mode necessary to be adopted respecting the disposal of sundry bonds, *tumussooks*, &c. deposited in your court, belonging to persons dying intestate.

In reply, I am desired to refer you to the rule contained in Section 7, Regulation V. 1799, by which you will perceive, that an inventory of all personal property, unclaimed after the period of twelve months from the decease of the proprietor, should be transmitted to the Governor General in Council for his orders; and to direct that, with regard to the description of property specified in your letter, you adopt the same course of proceeding.

March 19, 1830.

To the Judge of Zillah Cawnpore, dated the 19*th March*, 1830.

No. 542.

1821 Reg I Sec 8 Clauses 1, 2, 3, 4 5 and 6 1829 Reg I Sec 10 Reg XVIII Sec 3, Cl 2. 1829 Reg I Sec 2, Cl 2.

I am desired by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter, dated the 27th ultimo, soliciting the Court's instructions as to the following questions:

First. As commissioners of revenue and circuit are, under Section 10, Regulation I. 1829, vested with all the powers formerly vested in the special commission by Regulation I. 1821, requesting to be informed, whether under the 1st, 2nd, 3rd, 4th, 5th, and 6th clauses of Section 3, Regulation I. 1821, the trial of every kind of *zemindaree* or *putteedaree* claim is not institutable before the commissioners of revenue?

Secondly. If a claim be made by a *putteedar* against the *sudder malgoozar* for a share of a *mehal*, and that *sudder malgoozar* should not have instituted a suit himself, still is not such claim by the *putteedar* institutable before the commissioner of revenue, at the option of the parties?

Third. Are not appealed suits, in whatever court pending, for lands and shares of *zemindaries*, equally subject to clause 2, Section 3, Regulation XVIII. 1829?

Fourth. In future what steps are the *zillah* courts to take on a *zemindaree* claim being filed? At once to call upon the defendant under clause 2, Section 3, Regulation XVIII. 1829, or to refer the plaintiff at once to the commissioner of revenue?

2. In reply to your first question, the Court can only observe, that all cases which were formerly cognizable, under the rules cited by you, by the special commissioners

under Regulation I. 1821, are equally cognizable by the commissioners of revenue appointed under Regulation I. 1829.

3. In reply to your second, that the rules cited by you have been extended by clause 2, Section 2, Regulation I. 1823, which authorizes the cognizance of all cases, wherein it may appear that any plaintiff has been deprived of his right by an illegal sale, without reference to his being a *sudder malyoozar* or otherwise.

4. In reply to your third, that appealed suits are, in like manner as original suits, subject to clause 2, Section 3, Regulation XVIII. 1829.

5. And in reply to your fourth, that Regulation XVIII. 1829, refers to cases actually pending in the courts of judicature, and has no reference to cases which may arise hereafter, and which must of course be instituted in the revenue or the judicial courts, according as the subject matter may render them cognizable in the one or other tribunal.

March 19, 1830.

No. 543.
1813
Reg II

To the Magistrate of Zillah Rungpore, dated the 2nd April, 1830.

The Court of Nizamut Adawlut have had before them your letter, dated the 20th ultimo, requesting to know whether embezzlement is a committable offence.

2. In reply, I am desired to acquaint you, that the Court do not understand the Regulation (II. 1813) cited by you as intending a repeal of the Mahomedan law relative to the offence of embezzlement, which, being punishable under that law, may clearly be committed for trial to the court of circuit.

April 2, 1830.

No. 544.
1827
Reg. V.

To the Commissioner of Circuit for the 12th Division, dated the 16th April, 1830.

The Court of Nizamut Adawlut have had before them your letter of the 31st ultimo, animadverting on the construction of Regulation V. 1827, conveyed to you in Mr. Macnaghten's letter of February 26th, viz. that their previous construction of that Regulation on the 4th of September, 1829,* was not intended to be applicable to the magistrate's court.

2. In reply, I am desired by the Court of Nizamut Adawlut to inform you, that the Court see no reason to alter the opinion conveyed to you in Mr. Macnaghten's letter of February 26th.

3. In reply to the first of the questions proposed in the conclusion of your letter, viz. whether a commissioner can direct a magistrate or joint magistrate to issue orders to the collector to attach lands, in conformity with Regulation V. 1827, I am directed by the Court to answer it in the negative.

4. In reply to the second question proposed, the Court consider the decision of the commissioner to be final in all cases in which the course of procedure prescribed in the Regulations has been followed.

April 16, 1830.

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* No. 525, page 220.

To the Magistrate of Zillah Mymensingh, dated the 16th April, 1830.

No. 545.

Dewanny prisoners are not liable to punishment for escaping from jail.

I am desired by the Court of Nizamut Adawlut to acknowledge the receipt of your letter, under date the 3rd instant, requesting the Court's opinion regarding the punishment to which *dewanny* prisoners, who have escaped the jail, may be subject.

2. In reply, I have to inform you that the Court do not deem such persons liable to any punishment. In case of their escape from jail, the only course to be pursued is to use all possible means for their re-apprehension: and when apprehended, to re-commit them to prison.

April 16, 1830.

To the Officiating Commissioner of Circuit for the 10th Division, dated the 23rd April, 1830.

No. 546.
1824.
Reg. XV.

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of a letter from you, under date the 29th ultimo, enclosing a letter from the magistrate of Shahabad, on the subject of proceedings under the provisions of Regulation XV. 1824.

2. In reply, I am directed to inform you, that the Court of Nizamut Adawlut consider, that suits for dispossession to which *thicadars* are a party can only be tried under Regulation XLIX. 1793, and you are therefore requested to direct the magistrate of *zillah* Shahabad to strike off his file of suits cognizable under Regulation XV. 1824, the twenty-two cases mentioned in the eighth paragraph of his letter to you, dated the 20th ultimo.

April 23, 1830.

To the Commissioner of Circuit for the 13th Division, dated the 23rd April, 1830.

No. 547.
1824.
Reg. XV.

The Court of Nizamut Adawlut have had before them your letter, under date the 16th ultimo, requesting the Court's interpretation of an expression in their circular letter, dated July 13th, 1827,* and also inquiring whether disputes for personal property can be decided under Regulation XV. 1824.

2. In reply, I am directed to inform you, that under the Court's construction of Regulation XV. 1824, the supposed case of dispute between *ryots*, stated by you, is not cognizable under Regulation XV. 1824.

3. In reply to your second query, whether disputes for personal property can be investigated under this regulation, I am directed to refer you to the preamble thereof.

April 23, 1830.

To the Magistrate of Zillah Purnea, dated the 23rd April, 1830.

No. 548.
1821.
Reg. III Sec. 2.
1817.
Reg. XX Sec. 20.
1818
Reg. VIII.

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of your letter, under date the 3rd instant, requesting the Court's opinion regarding the competency of an assistant vested with extra powers described in Section 2, Regulation III. 1821, to require security for good behaviour from a prisoner sent in by a *daroyah*, under Section

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* See No 453, page 191, circulated with the Court's letter of 28th August, 1829, No. 37, page 46, vol. II. of Nizamut Circular Orders.

20, Regulation XX. 1817, or to commence an enquiry into the character of a prisoner made over to him for trial on a specific charge.

2. In reply, I am directed to communicate to you the opinion of the Court, that an assistant vested with the special powers described in Section 2, Regulation III. 1821, is not competent to act in either of the cases mentioned. Should he, in any trial referred to him by the magistrate, conceive it advisable to require security from a prisoner not convicted of the crime charged, he must report to the magistrate to that effect.

April 23, 1830.

To the Commissioner of Circuit for the 8th Division, dated the 30th April, 1830.

No. 549.

1828 Reg VIII.

The Court of Nizamut Adawlut have had before them your letter, dated the 12th instant, desiring to be informed, whether a certain case, stated by you, is cognizable by the magistrate, under the provisions of Regulation VIII. 1828.

2. In reply, I am directed to communicate to you the Court's opinion, that the offence, as detailed by you in the second paragraph of your letter, would be more strictly considered as resistance of process than affray, and therefore punishable under the regulations applicable to the former case.

April 30, 1830.

No. 550.

Execution of a decree stayed on special grounds, without demand of security.

A decree having been passed against certain persons, under which they have been declared, with their families, the slaves, and as such the property of the decree-holder, was affirmed in the provincial court; but a special appeal was admitted by the Sudder Dewanny Adawlut, on the grounds of the appellants, (the slaves under the judgments already given,) not appearing to be so under what, by the Mahomedan law, is required to constitute slavery. The appellants did not give security to stay the execution of the decree, for which the decree-holder had made application. Under these circumstances, it became a question whether execution should be ordered; or if stayed, upon what terms.

The Court were of opinion, that as the special appeal was admitted on the presumption, that the appellants had been wrongfully declared to be slaves, and as they would be unable to prosecute their appeal if delivered over to the custody of the decree-holder as slaves, the execution of the decree should, in this special instance, be stayed without demanding security from the appellants.

May 7, 1830.

To the Judge of Zillah Cawnpore, dated the 7th May, 1830.

No. 551.

1805. Reg. II. Sec. 10. 1814 Reg XXVI. Sec. 4, Cl. 2.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 21st ultimo, requesting the Court's answer to certain questions, involving the construction of Section 10, Regulation II. 1805; clause 2, Section 4, Regulation XXVI. 1814; and clause 1, Section 2, Regulation II. 1825.

2. In reply, I am directed to communicate to you the opinion of the Court, that under the circumstances stated in your letter, a second regular suit would be inadmissible; but that the plaintiff, whose suit had been dismissed by the *sudder ameen*, on the strength of the decree of the judge which was afterwards reversed in appeal by the provincial court, might petition for a summary appeal under Section 3, Regulation XXVI. 1814, as from a dismissal without an investigation of the merits of the case; or had the case been dismissed by a judge, on a decree of the provincial court afterwards reversed by the Sudder Dewanny Adawlut, the facts stated by you would be sufficient to authorize the judge to apply for a review of judgment, which the Court would grant; or, had the plaintiff preferred a regular appeal from the decision of the *sudder ameen*, the facts stated would be sufficient to authorize the admission of the appeal, notwithstanding the expiration of the period allowed by the regulations.

May 7, 1830.

No. 552.

Special appeal from a decision on its merits by the provincial court of a case dismissed on default by the *zillah* judge.

The following question having been proposed to the Court: "A case being nonsuited by the *zillah* judge, the plaintiff appeals to the provincial court, where his case having been heard on its merits, a decision is passed in his favor. The respondent presents a petition for the admission of a *khas* or special appeal. As the provincial court ought, strictly speaking, to have merely tried the justice of the nonsuiting order—should a special appeal be admitted? or should the appeal be considered as a first or regular appeal?" the Court were of opinion, that the most regular course would be to admit a special appeal.

May 14, 1830.

To the Judge of Zillah Futtehpore, dated the 28th May, 1830.

No. 553.

1829. Reg. X. Sch. B. No. 7.

I am directed by the Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 7th instant, requesting to know, whether the petitions of all persons confined in jail are to be considered as coming under the exemptions specified in No. 7, Schedule B. Regulation X. 1829.

2. In reply, I am directed to inform you, that the Court are of opinion, that the exemptions referred to should be construed to allow the prisoners, confined under civil process, to petition on plain paper, only in matters relating to their treatment in jail; and persons confined under criminal process, in matters relating to their treatment in jail, and to the case in which they are confined.*

May 28, 1830.

To the Acting Judge of Zillah Futtehpore, dated the 28th May, 1830.

No. 554.

1825. Reg. VII. Sec. 2.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 30th ultimo, requesting the Court's instructions as to the mode of proceeding to be adopted by a judge, in the event of the purchaser of property sold by

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* Circulated for general information on the same date.

the officers of the court in execution of a decree refusing to pay the purchase money, and take possession of the property; and in the event of a second sale taking place, in what manner the Judge is to realize the amount bid at the first sale, should the property be disposed of for a smaller sum.

2. In reply, I am desired to acquaint you, that, in the case stated, you should adopt the process prescribed for enforcing a decree of court.

May 28, 1830.

No. 555.

1829.
Reg X.
Sch. B. No. 7.

To the Judge of Zillah Cawnpore, dated the 28th May, 1830.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 14th instant, inquiring on what stamp paper security bonds for costs of suits, &c. entered into by order of a civil court should be written, under the provisions of Regulation X. of 1829; and to inform you in reply, that such bonds should be written on the stamp prescribed in No. 7, Schedule B. Regulation X. 1829, for petitions presented to the courts requiring the security.

May 28, 1830.

No. 556.

1814
Reg XXVI.
Sec. 8. Cl 5.
1829
Reg X.
Sch. B. No. 9.

To the Judge of Zillah Dinagepore, dated the 28th May, 1830.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 6th instant, bringing to the notice of the Court two errors in the Bengallee translation of Regulation X. 1829, and requesting to be informed on what stamp paper the reasons for an appeal [*wujoohat-i-appeal*] should be presented.

2. In reply, I am directed to inform you, that the errors noticed by you will be brought to the notice of Government, with a view to their correction: and to observe, on the subject of your last paragraph, that the fifth clause of Section 8, Regulation XXVI. 1814, which has not been rescinded by Regulation X. 1829, or any other enactment, provides that the specific objections of a judgment appealed from, if not stated in the petition of appeal, shall be filed as a separate pleading. The value of the stamp to be used for such pleadings is laid down in No. 9, Schedule B. Regulation X. 1829.

May 28, 1830.

No. 557.

1829.
Reg X.
Sch. A. No. 7.
Sch. B No. 10.

To the Secretary to the Government in the Judicial Department, dated the 28th May, 1830.

I am directed by the Court of Sudder Dewanny Adawlut to request you will lay before the Right Honorable the Governor General in Council, the accompanying statement, furnished by Doctor Carey, Bengalee translator, of two errata which have been discovered in the Bengalee translation of Regulation X. 1829, with a view to their being printed for general information.

2. They are as follows: the omission of the negative particle না before the verb হইবে, in No. 7, Schedule A.; and the substitution of the word আর্দ্ধ (half) in the No. 10 Schedule B., in the ninth line of the 2nd page containing that number, for the word সেই.

May 28, 1830.

To the Officiating Commissioner of Circuit of the 17th Division, dated the 3rd June, 1830.

No. 558, 1803. Reg LIII 1817. Reg XVII. Sec. 8.

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of your letter of the 15th ultimo, requesting the Court's opinion, whether a commissioner of circuit, with the concurrence of his law officer, is competent to convict prisoners upon strong presumption (*zun-i-ghalib*, or *shubah-i-cuwee*) of burglary or theft, attended with wounding dangerously, and to proceed to pass sentence under Regulation LIII. 1803, in the absence of full legal proof; or whether it is required by Section 8, Regulation XVII. 1817, that the trials in such cases should be transmitted for the sentence of the Nizamut Adawlut. and of your letter of the 19th ultimo, reporting that in the cases you had in view in the above reference, death did ensue.

2. In reply, I am directed to inform you, that a *futwa* expressed in the terms mentioned by you is a *futwa* of conviction: and that if you concur therein, and the burglary or theft be accompanied with an attempt to commit wilful murder by whatever means, or with wounding, burning, or corporal injury, in such a degree as to endanger life, you should proceed, as prescribed in the fourth clause of Section 8, Regulation XVII. 1817, to pass upon the prisoners a sentence of thirty-nine stripes of the ratan and imprisonment and transportation for life, and refer the trial for the final orders of the Nizamut Adawlut; suspending the issue of your warrant for execution of your sentence until the final orders of the Nizamut Adawlut shall be received.

3. With reference however to your letter of the 19th ultimo, in which you state that death did ensue from the wounding, the Court, being of opinion that the commitment should not have been made until the result of the wounds had been put beyond doubt, either by the recovery from danger, or death of the wounded person, desire that you will stay all further proceedings, and direct the magistrate to commit the prisoners *de novo* on the charge of burglary, or burglary and theft, as the case may be, attended with murder.

4. In trying these cases, it will be incumbent on you to submit the record of the trial, with your opinion as to the guilt or innocence of the prisoners, without passing sentence, as prescribed by the regulations in all cases of murder.

June 3, 1830.

To the Magistrate of Zillah Midnapore, dated the 11th June, 1830.

No. 559. 1817 Reg XVII. Sec 10, Cl. 3.

In reply to your letter of the 2nd instant, I am directed by the Court of Nizamut Adawlut to inform you, that the melting down gold and silver coins, for the purpose of making ornaments with the metal, is not punishable under the provisions of clause 3, Section 10, Regulation XVII. 1817.

June 11, 1830.

To the Commissioner of Circuit of the 11th Division, dated the 11th June, 1830.

No. 560. 1819. Reg VII. Sec. 6, Cl. 2 and 3.

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of your letter of the 2nd instant, transmitting copies of a letter from the acting magistrate of Patna, under date 18th June, 1828, to the address of the late Patna court of circuit, and of that court's reply, dated 26th June, 1828; stating, that agreeably to the spirit of clauses 2

and 3, Section 6, Regulation VII. 1819, the court of circuit conceived that the complaints of *beoparees* for arrears of wages when in the service of Government, were cognizable by the magistrate.

2. In reply, I am directed by the Court to inform you, that the Court consider the construction of the late Patna court to be erroneous, and that the *beoparees* should be referred to the civil court for the adjustment of their claims for the hire of their hackeries and bullocks.

June 11, 1830.

No. 561.
1824
Reg XV.

To the Commissioner of Circuit of the 13th Division, dated the 18th June, 1830.

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of your letter of the 5th instant, requesting, with reference to your letter of the 16th March last, and Mr. Thomason's reply of the 23rd April last,* a further construction of Regulation XV. 1824.

2. In reply, I am directed to inform you, that the construction of the above regulation given by you in your letter of the 16th March last is correct, and the provisions of Regulation XV. 1824, are only applicable to disputes between persons claiming a proprietary right in the land, or their agents, *(Gomastahs, Narbs, &c.)*

June 18, 1830.

No. 562.
1821.
Reg 1 Sec 3.
1820.
Reg XVIII Sec. 2
1823
Reg I.

To the Judge of Zillah Cawnpore, dated the 18th June, 1830.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 24th April last, acknowledging Mr. Macnaghten's letter of the 19th March last,† and requesting further information on the subject of claims for land, under the provisions of Section 3, Regulation I. 1820, and Section 2, Regulation XVIII. 1829.

2. In reply, I am directed by the Court to repeat the construction contained in the letter above-mentioned, that all suits which were cognizable by the special commissioners, under Regulation I. of 1821, and Regulation I. of 1823, are now cognizable by the commissioners of revenue. In regard to suits not called for by the commissioner, the Court desire you will exercise your judgment as to whether they should be transferred to that authority or not.

June 18, 1830.

No. 563.

Petitions to the Nizamut Adawlut may be presented by the *vakeels* of the Sudder Dewanny Adawlut or by *mookhtars* duly appointed.

To the Judge and Magistrate of Zillah Etawah, dated the 18th June, 1830.

In reply to your letter of the 1st instant, I am directed by the Courts of Sudder Dewanny and Nizamut Adawlut to inform you that the *vakeels* of the Sudder Dewanny Adawlut may present petitions to the Court of Nizamut Adawlut, and that there are no *mokhtars* specially appointed to do so. Petitions in criminal matters are received through any *mokhtars* the petitioner may wish to employ.

June 18, 1830.

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* See No 547, page 231. † See No 542, page 229

To the Commissioner of Circuit for the 13th Division, dated the 9th July, 1830.

No. 564.

1830
Reg. V

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of your letter of the 24th ultimo, requesting to know, with reference to Regulation V. 1830, by what process the defendants are to be summoned; and how the order for cultivating indigo is to be enforced.

2. In reply, I am directed to inform you, that the regulation in question being silent on the subject, the defendants should be summoned in the manner prescribed by the regulations at present in force, viz. by an *itilehnameh*, to be served by a single peon; and that the order to cultivate can only be enforced by the menace of increased punishment on any further default.

July 9, 1830.

To the Judge of Zillah Jessore, dated the 9th July, 1830.

No. 565.

1805.
Reg II.
1823
Reg. VI.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 27th May last, on the subject of indigo engagements, and to communicate to you the following replies to the several questions therein submitted:

Question 1. The rules prescribed in Regulation II. 1805, in regard to the institution of summary suits for rent, should be applied to suits for the recovery of advances for indigo, instituted under Regulation VI. 1823.

Question 2. The owner of the factory for the time being should be considered as standing in the place of the former owner, by whom the advance was made, and equally entitled to adopt any of the processes for the recovery thereof which the regulation referred to allows.

July 9, 1830.

Extract from a letter to the Magistrate of Zillah Mymensingh, dated the 16th July, 1830.

No. 566.

Date of receipt of regulations to be endorsed thereon.

PAR. 2. With reference to the expression contained in your letter, that you cannot ascertain the exact date on which the translations were received, the Court direct me to notice, that you should invariably note on each copy of a regulation, and of the translations thereof, the date on which they may be received in your office, attesting the note by your official signature.

July 16, 1830.

To the Judge of the 24-Pergunnahs, dated the 23rd July, 1830.

No. 567.

Courts not to execute decrees of the Supreme Court, unless a writ of assistance be issued.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 15th instant, requesting their opinion as to whether an application by Mr. E. Macnaghten, acting as receiver on the part of Kistonund Biswas, to carry into execution a decree of the Supreme Court, accompanied by a copy of the decree, is sufficient to authorize your interference; or whether a formal order of the Supreme Court, calling on you to give possession of the lands situated within your jurisdiction, should not issue, in order to bring the matter under your cognizance.

2. In reply, I am directed to inform you, that you should not interfere with the execution of decrees of the Supreme Court unless a writ directing execution be issued by that court.

July 23, 1830.

No. 568.

1824
Reg XV
1793
Reg XLIX.

To the Commissioner of Circuit for the 10th Division, dated the 23rd July, 1830.

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of your letter of the 14th instant, submitting a letter from the magistrate of *zillah* Shahabad, under date the 29th ultimo, requiring the Court's opinion on certain points under Regulation XV. 1824.

2. In reply, I am directed to state, that in cases of disputes regarding land, if the proprietors of the lands are themselves engaged in the dispute, the case is cognizable under Regulation XV. 1824, and not otherwise; but that in the case of a mere farmer, if any one dispossess him or interfere with his rights, the provisions of the regulation before quoted do not apply, and the farmer must be referred to a summary suit under the provisions of Regulation XLIX. 1793, for recovery of possession, or to a summary suit for the rent of the lands of which the acts of his opponents have deprived him.

July 23, 1830.

No. 569.

1806
Reg II Sec. 10.
1814
Reg XXIII.
Sec. 45, Cl. 7.

To the Judge of Zillah Jungle Mehals, dated the 23rd July, 1830.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 9th instant, enclosing copy a letter from the register of your court, and requesting the Court's opinion on the subject of the release of a debtor confined in a *dewanny* jail, on his executing a *kistbundee* in favor of his creditor, under the provisions of Section 10, Regulation II. 1806.

2. In reply, I am directed by the Court to inform you, that according to the provisions above quoted, it is incumbent on the civil courts to release a debtor with the consent of his creditor, on the execution, by the former, of a *kistbundee*. The Court however observe, that the execution of a *kistbundee* for a larger sum than 64 rupees, including interest and costs of suit, cannot be considered as depriving the debtor of his claim to be released, under clause 7, Section 45, Regulation XXIII. 1814, after he has been confined for the space of six months, in execution of a decree for a sum not exceeding 64 rupees.

July 23, 1830.

No. 570.

Europeans presumed to have the same power of answering trivial complaints by attorney as natives.

To the Magistrate of Zillah Behar, dated the 30th July, 1830.

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of your letter of the 15th instant, requesting the Court's opinion as to whether an European charged by a native with assault, under Section 105, Chapter 155, Statute 53rd of George III. is allowed to appear to answer the charge by attorney.

2. In reply, I am directed to observe, that the Court are not the authority to construe acts of parliament, but that they see no reason why Europeans should not be allowed the privilege of appearing by attorney which is enjoyed by natives.

July 30, 1830.

To the Commissioner of Circuit for the 9th Division, dated the 6th August, 1830.

No. 571.

1813. Reg. VI. Sec. 3. 1824. Reg. XV.

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of your letter of the 3rd ultimo, requesting the Court's opinion on certain points regarding the power of a magistrate, under Regulation XV. 1824, to accept arbitration bonds, and confirm and execute awards for the final decision of all matters at issue between the parties.

2. In reply, I am directed to inform you, that the Court are of opinion, that a magistrate has no power to receive such arbitration bonds, or interfere to the enforcement of the awards of arbitrators. The interference of a magistrate, under Regulation XV. 1824, is restricted to cases wherein he has reasonable ground to apprehend disturbances; and after he has interfered, his power extends no further than, after due inquiry, to award that the actual possessor retain possession of the disputed property.

3. If at any time after a case of dispute has been brought into the magistrate's court under the regulation above quoted, the parties should wish to refer their respective claims to the decision of the arbitrators, they are at liberty to do so; and upon their representing to the magistrate that they have agreed to an adjustment of their dispute in that manner, and satisfying him that there is no further ground to apprehend a breach of the peace, the Court are of opinion, that the magistrate should stay all further proceedings in the case. The parties would then be at liberty to refer their dispute to private arbitration, under Section 3, Regulatin VI. 1813, and the award, whatever it might be, would be enforced by the civil court, in the manner prescribed in the second clause of the same section and regulation, upon application being made to it by either party within the time proscribed.

August 6, 1830.

To the Acting Judge of Zillah Allahabad, dated the 27th August, 1830.

No. 572.

Power of a judge to take cognizance of forgery, arising out of a case tried by a Sudder Ameen.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 23rd ultimo, requesting the Court's opinion, as to whether you are authorized to take cognizance of a case of forgery arising out of a civil suit tried by a *sudder ameen.*

2. In reply, I am directed to inform you, that if the civil suit, in which the document said to be a forgery was filed, is pending before you in appeal, you are competent to commit the party, whom you may deem guilty of having forged it, (or filed it knowing it to have been forged,) to be tried by the court of circuit; but that if the appeal has been decided, the alleged forgery can only be brought under your cognizance, by your obtaining the sanction of the Sudder Dewanny Adawlut to revise your judgment.

3. I am further directed to inform you, that in the opinion of the Court, the *sudder ameen,* who tried the suit in the first instance, if he thought that the document in question was a forgery, and that the party who filed it knew it to be so, should have sent the case to the judge who would have been competent to proceed against the person or persons whom he might have deemed guilty, in like manner as it would be in a suit instituted and pending before himself.*

August 27, 1830.

* See Circular Orders N. A. No. 14, page 18, vol. II. relating to the analogy between cases of perjury and forgery.

No. 573.

1816.

Reg. XVII. Sec. 7, Cl. 5.

To the Commissioner of Circuit for the 17th Division, dated the 17th September, 1830.

In reply to your letter of the 7th instant, requesting to be informed, whether you are competent to take cognizance of appeals preferred by subordinate police officers dismissed from office, I am directed to inform you that the construction of clause 5, Section 7, Regulation XVII. 1816, issued in the Court's circular order of the 8th April, 1818, (No. 197, page 168, volume 1st, Baptist Mission Press Edition,) does not bar the cognizance of an appeal from a conviction of a specific offence.

September 17, 1830.

No. 574.

1812.

Reg V.

To the Judge of Zillah Midnapore, dated the 17th September, 1830.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 3rd ultimo, requesting the Court's opinion on certain points relative to the recovery of private rents by distraint of the property of the defaulter, and by summary suits.

2. In reply, I am directed by the Court to observe, that under the law as it now stands, a *zumeendar*, *talookdar*, farmer, or other landholder may distrain the property of his *ryots* and under-tenants; and the *moonsiffs* must proceed, in conformity to the rules prescribed, to the sale of the property distrained, although the distrainer do not produce a *kabooluat* executed by the alleged defaulter. The right to distrain is vested in the landholder with a view to facilitate the realization of his rents, and he cannot be deprived of it by a rule, which a judge, or other functionary, may take upon himself to enact. If he distrain unjustly, he does so at his own risk, and the tenant or *ryot* may immediately apply for redress to the established courts of justice.

3. The Court further observe, that a *zumeendar*, *talookdar*, farmer, or other landholder, who, in a summary suit, can shew by his village accounts, (proved to be kept in a regular form and to be true accounts,) or by any other probably true evidence, that the arrear demanded by him is due by the defendant, he is entitled, under the existing law, to a decree for the amount of the arrear, although he may not have granted a *pottah* to the defendant, or have received a *kabooluat* from him.

4. Under this view of the case, the Court desire that you will recall the notification mentioned in the third paragraph of your letter, and that part of the orders issued to the *moonsiffs* noticed in the fourth paragraph, which directs them not to sell distrained property unless a distrainer produce a *kabooluat*. The mode of proceeding to be adopted, when two parties claim an arrear from the same *ryot*, being clearly defined in the circular order of 3rd June 1813, (No. 36, page 25, part 1st, of volume I. Cir. Ord. S. D. A. Baptist Mission Press Edition,) the Court desire, that you will communicate them to your *moonsiffs*, for their information and guidance.

September 17, 1830.

No. 575.

1793

Reg. IV. Sec. 8.

1799

Reg VII.

1800

Reg VI. Sec. 2.

To the Judge of Zillah Hooghly, dated the 24th September, 1830.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 10th instant, requesting the Court's opinion as to whether the terms of Section 2, Regulation VI. 1830, preclude the issue of a *dustuc* for the arrest of a defaulter, under Regulation VII. 1799, until subsistence money for thirty days shall have been paid into the *nazir's* hands.

2. In reply, I am directed by the Court to observe, that the object of the Regulation in question being to modify the provisions of Section 8, Regulation IV. 1793, so as to prevent debtors confined in jails suffering additional hardships from the failure of their creditors to furnish them with subsistence, the terms of the section quoted by you cannot be considered as barring the issue of a *dustuc* against a defaulter, under Regulation VII. 1799, though no defaulter can be committed to jail, until the subsistence money for thirty days has been deposited.*.

September 24, 1830.

To the Judge of Zillah Beerbhoom, dated the 1st October, 1830.

No. 576
1819
Reg II Sec 30
Cl. 1

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 4th August last, requesting the Court's instructions on certain points connected with the provisions of clause 1, Section 30, Regulation II. 1819.

2. In reply, I am directed to inform you, that the Court, understanding your first question to have reference to cases in which Government would not be entitled to any revenue from the land, if resumed, are of opinion, that the petition of plaint should be written on stamp paper of the value prescribed for rent-free lands, whether the claim be by an individual against a *zemeendar* to hold land on a rent-free tenure, or by a *zemeendar* to resume land held on an illegal rent-free tenure.

3. In reply to your second query, in the case of a *zemeendar* suing to resume lands held on a rent-free tenure, the only question for the Court to determine is the validity or otherwise of the alleged rent-free tenure, and not the amount assessable thereon. The decree, in the event of the suit being decided in favor of the plaintiff, should merely declare the land liable to assessment.

October 1, 1830.

To the Judge of Zillah Behar, dated the 5th November, 1830.

No 577.
1829
Reg X
Sch B Art 8.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 19th ultimo, requesting the Court's construction of that part of Schedule B. Regulation X. of 1829, which relates to the mode of estimating the value of stamp paper required in suing for *malgoozaree* estates.

2. In reply to your first query, I am directed to state, that if the cause of action be one and the same, a plaintiff may sue for two or more distinctly assessed *mouzehs* or *mehals*, in one and the same action, laying his plaint at the aggregate value of the whole sued for.

3. The above reply renders it unnecessary to answer your second query, and in reply to the third, I am directed to state, that the penalty of nonsuit, provided in the concluding part of article 8, Schedule B. Regulation X. 1829, is applicable to all suits in which the conditions contained in the said provision have not been complied with.

November 5, 1830.

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* The letter was circulated for general information. See Cir. Ord. S D A 14th June, 1831, No. 6, p. 25, vol. II. B. M. P. Ed

No. 578.

1809
Reg VIII Sec. 5.

To the Commissioner for the 10th Division, dated the 12th November, 1830.

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of a letter from you, dated 22d September last, requesting the Court's opinion as to the legality of the temporary appointment of a person to officiate in the room of a native officer of a magistrate's court; such appointment not being immediately reported to the court of circuit, as required by the concluding sentence of clause 2, Section 5, Regulation VIII. of 1809: and in reply to refer you to the Court's circular orders, on this subject, dated the 8th April, 1818, and 1st January, 1830, (No. 197, page 168, volume I. and No. 12, page 11, volume II. of the Baptist Mission Press Edition.)

November 12, 1830.

No. 579.

1824
Reg XV

To the Civil and Criminal Courts, dated the 17th December, 1830.

I am directed by the Court of Nizamut Adawlut to transmit to you for your information and guidance, the following observations explanatory of their construction of Regulation XV. 1824, contained in Mr. Macnaghten's letter to the Patna provincial court, dated 13th July, 1827,* circulated for general information on the 28th August, 1829, (No. 37 of part 1st, volume II. page 46, Baptist Mission Press Edition.)

2. In that construction it is declared, that the provisions of Regulation XV. 1824, "were never intended to apply to mere *kashthars* or cultivators of the soil, or in "other words, to persons having no property in the soil, but merely disputing about the "right to cultivate." This construction excludes from the operation of the regulation not only disputes between the *zemeendars* and their *ryots*, but also between *zemeendars* and their farmers; and in fact, between all parties not having each a permanent interest in the land, or other property, of which the possession is disputed; and was adopted by the Court on the following considerations.

3. Regulations VII. 1799, V. 1812, and subsequent enactments vest *zemeendars* and other landholders with the right, (under responsibility to the civil courts for its legal and just exercise,) to attach (*i. e.* to take temporary possession of) the lands occupied by their *ryots*, *talookdars*, and farmers, for default in the payment of their rent, and to oust them altogether from their tenures at the expiration of the term of their *pottahs*, if they refuse to execute new engagements. Those enactments have not been rescinded; and so long as they shall continue in force, the claims of *ryots*, *talookdars*, or farmers to be restored to the management of lands from which they have been ousted by their landlords cannot be decided on a bare ascertainment of the fact of possession; and cannot therefore be cognizable by a magistrate under Regulation XV. 1824.

4. On the same principle, a dispute between *ryots*, each claiming to cultivate the same field, or between persons each claiming to be lessee, or farmer of the same village in one and the same estate, cannot be decided by a magistrate in conformity with the rules of the regulation referred to: because it belongs to the landlord or person entitled to the rent of the field or village in dispute to let it to whom he thinks proper, subject of course to a civil prosecution by the party who may consider himself wronged.

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* See No. 453, page 191.

5. Neither, consistently with justice to proprietors, can the provisions of Regulation XV. 1824, be held applicable to disputes between farmers of different estates, each claiming land as belonging to the estate of the proprietor from whom he obtained his lease. If the Regulation were construed to extend to such disputes, a proprietor could not let his lands in farm, without subjecting himself to the risk of losing possession of a part of his property by a summary decision, obtained, either through the collusion of his lessee with an adverse proprietor, or from his lessee's ignorance of the proofs adducible in support of his right, which decision it would take years of expensive and vexatious litigation to get reversed.

6. It is to be observed, that, by the above construction, cases of dispute between two farmers and two *ryots* of different estates, each claiming the same portion of lands, as belonging to the estate of his landlord, and included in his farm, are not necessarily excluded from the cognizance of the magistrate; as, in such cases, the proprietors of the two estates may be made parties in the dispute, along with the contending farmers and *ryots*, and the *perwannahs*, prescribed in section 3 of the regulation referred to, issued to the former as well as the latter.

7. It is also to be observed, that as *putneedars*, *mocurrureedars*, and *lakherajdars* have a transferable proprietary right in their tenures, the above construction does not exclude from the operation of the regulation any cases of dispute between these descriptions of landholders, which relate merely to the boundaries or the possession of the tenures, and do not involve any question regarding the performance of the conditions, or the validity of the title under which they are held. But in such cases, with a view to prevent injurious interference on the part of the magistrates with the rights of the *zemeendars* of estates in which they may occur, it is considered proper that *perwannahs*, allowing the *zemeendars* the option of attending as parties during the investigation of the cases, should be issued to them, at the same time that the *perwannahs* prescribed in section 3 of the regulation are issued to the other parties.

December 17, 1830.

To the Judge of Zillah Burdwan, dated the 24th December, 1830.

No. 580.
1819
Reg VIII. Sec. 9

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 14th instant, requesting the Court's construction of certain points connected with the sale of *putnee taooks* by public auction, under Section 9, Regulation VIII. of 1829.

2. The Court are of opinion, that if the auction purchaser do not pay the balance of the purchase-money by noon of the eighth day from the day of sale, he forfeits by his failure the fifteen per cent. deposited by him on the day of sale, and all right to benefit by an increased price at a second sale, while he will be answerable for any deficiency; and that the forfeited percentage is to be considered as part of the proceeds available for the benefit of the defaulter. Should this last be sufficient to cover the balance claimed by the *zemeendar*, no further sale need take place; otherwise (if the balance be not previously paid by the defaulter) the *talook* must be re-sold on the ninth day, and any surplus of the forfeited

percentage and of the proceeds of the second sale, after liquidating the *zemeendar's* demand, must be paid to the defaulting *talookdar*.

December 24, 1830.

No. 581.

Appeal from summary decision admissible, if the provisions of the regulations have not been complied with.

To the Provincial Court of Appeal, Dacca, dated the 31*st December*, 1830.

In reply to your letter of the 11th instant, submitting, at the request of the judge of Tipperah, a reference as to the competency of a provincial court of appeal to revise an order passed by a *zillah* judge in a summary suit instituted under Regulation V. 1812, I am directed by the Court of Sudder Dewanny Adawlut to inform you, that as the order of the *zillah* judge appears to have been contrary to the provisions of the regulation quoted, it was clearly competent to you to direct him to conform thereto.

December 31, 1830.

No. 582.

1819
Reg VII. Sec. 6.

To the Commissioner of Circuit of the 4th Division, dated the 7th January, 1831.

In reply to your letter of the 1st ultimo, requesting the Court's opinion on two questions, involving a construction of Section 6, Regulation VII. 1819, I am directed by the Court of Nizamut Adawlut to communicate the following replies.

2. *Question 1st.* Whether Regulation VII. 1819, so far as relates to the recovery of wages, should not be considered strictly a summary regulation, and only applicable to cases in which the cause of action may have arisen within the year in which the complaint is preferred?

The intention of the regulation evidently is, that the complaint should be made immediately on the occurrence of the cause of complaint; the Court therefore are of opinion that the case alluded to in your letter, in which nearly two years and an half had elapsed, was not one properly cognizable under the regulation.

3. *Question 2nd.* Whether complainants for arrears, under Regulation VII. 1819, should be compelled to swear to the truth of their complaints, or whether they should not be considered in the light of plaintiffs in civil suits, and not examined on oath except by the consent of both parties?

The Court are of opinion that the complaint, like all other complaints in a criminal court, must be preferred on oath.

January 7, 1831.

No. 583.

1829
Reg X.
Sch. B. Art. 8.

To the Commissioner of Appeal for the 16th Division, dated the 7th January, 1831.

The Court of Sudder Dewanny Adawlut having had before them your letter of the 30th November last, and its enclosures, relating to the construction of article 8, Schedule B. Regulation X. 1829; direct me to state, that the article quoted relates merely to the stamp paper leviable, in lieu of the former institution fee, on petitions of plaint and appeal in regular original suits and appeals and special appeals; and that petitions in summary suits are to be taxed as petitions under article 7, Schedule B. The Court therefore desire, that you will direct the judge of Chittagong to recall the proclamation, issued in conformity with his *roobucaree* of the 20th March last, and to give publicity to this construction of the point in question.

January 7, 1831.

To the Provincial Zillah and City Courts, dated the 25th February, 1831.

No. 584.
1819
Reg II Sec. 30.

Several instances having occurred, in which it has been found necessary to quash the proceedings of the lower courts in suits involving the question of the validity of titles to hold land exempt from the payment of revenue, in consequence of their having been tried and determined without a previous reference to the collectors, as expressly required by Section 30, Regulation II. 1819, the Court desire, that you will immediately inspect the suits pending on your own file and on the files of your registers and *sudder ameens*, and transfer for report to the collector all suits of the nature above stated, which have not already been referred and reported on.

February 25, 1831.

To the Magistrate of Zillah Etawah, dated the 25th March, 1831.

No. 585.
1817
Reg. XX. Sec 16.

In reply to your letter of the 10th instant, requesting to be informed the precise meaning of the word "declaration," in the 2nd clause of Section 16, Regulation XX. 1817, I am directed by the Court of Nizamut Adawlut to inform you, that it means *Izhar*, and not an *Ikrarnameh*, as erroneously translated in the regulation.

March 25, 1831.

To the Provincial Court of Appeal, Dacca, dated the 8th April, 1831.

No. 586.
1821
Reg II. Sec 8

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 28th ultimo, requesting to be informed, whether in the opinion of the Court you are authorized, under the provision of Section 8, Regulation II. 1821, to attach houses in the city of Dacca, in execution of a decree passed by you in an original suit for arrears of rent due from land in the *zillah* of Backergunge.

2. The Court observe, that the wording of the section quoted by you is not quite clear, but adverting to the object of the provision, as stated in the preamble of the Regulation; viz. to afford relief to the judges of the *zillah* and city courts within the local limits of the jurisdiction of which the provincial courts may be situated, they are of opinion, that you are authorized under that section to attach, through your own officers, land or other amenable property, situated within the city of Dacca, in execution of the decree alluded to.

April 8, 1831.

To the Provincial Court of Appeal, Dacca, dated the 8th April, 1831.

No. 587.
1814
Reg XXIII.
Sec 52.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 23rd ultimo and its enclosures, relating to a claim preferred by the *nazir* of the civil court of Backergunge to a commission on the proceeds of sales conducted by him: and to inform you, in reply, that the Court are of opinion, that *nazirs* are not entitled under the existing regulations to the fee of one anna per rupee on the proceeds of sales conducted by them in execution of decrees, allowed to *moonsiffs* for performing such duties, by Section 52, Regulation XXIII. 1814.

April 8, 1831.

No. 588.

1806
Reg. II. Sec. 5.

To the Commissioner of Appeal of the 16th Division, dated the 8th April, 1831.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 28th ultimo and its enclosures, requesting the Court's opinion as to how far the goods of an European are liable to be attached, on a plaintiff's making oath that the said European is about to alienate them.

2. In reply, I am directed to inform you, that the property of an European defendant is liable to attachment in a suit legally instituted, in like manner as the property of any other person subject to the jurisdiction of the court, upon the court's being satisfied, by sufficient proof, that there is reason to believe the defendant intends to abscond and withdraw himself, or remove his property, the detention of which is necessary to the satisfaction of eventual judgment.

3. I am further directed to observe, that the attachment of the property of the defendant, in the case noticed in the letter from the judge of Chittagong, on the mere oath of the plaintiff, appears to have been premature, and the process of attachment, as exhibited in the judge's letter, at variance with the provisions of clause 2, Section 5, Regulation II. 1806.

4. With reference to the question contained in your second paragraph, I am directed to state, that until the proclamation of attachment has been issued in conformity with the above rule, the defendant may legally alienate his property.

April 8, 1831.

No. 589.

1819
Reg. II. Sec. 30,
Cl 1.

To the Provincial Court of Appeal, Calcutta, dated the 8th April, 1831.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 3rd ultimo, submitting a reference from the judge of Hooghly, objecting to the reversal by your court of an order passed by him, rejecting a prayer for a special appeal.

2. In reply, I am directed to observe, that clause 1, Section 30, Regulation II. of 1819, expressly directs, that "all suits preferred in a court of judicature by proprietors, "farmers, or *talookdars*, to the revenue of any land held free of assessment, as well as all "suits preferred by individuals claiming to hold lands exempt from revenue, shall immediately on their institution, be referred for investigation to the collector." The judge of Hooghly therefore should not have referred the case in question to the *sudder ameen*. In clause 6 of the same section, it is provided, that "the collector, on closing his proceedings, shall transmit them, with all the documents therein referred to, to the court "by which the reference was made, and the court shall decide the case." As the *sudder ameen* could not, and did not, refer the case to the collector, he was not, under the provision quoted, authorized to try it after it was reported on by the collector.

3. Under this view of the subject, the Court approve of the order passed by you, directing the judge to admit the special appeal, and try the case himself, and request that you will communicate this opinion to him for his information and future guidance.

April 8, 1831.

To the Commissioner of Circuit for the 15th Division, dated the 8th April, 1831.

No. 590.

1797 Reg. XIV. Sec. 8.

In reply to your letter of the 18th ultimo, I am directed by the Court of Nizamut Adawlut to inform you, that the payment of actual costs awarded by a magistrate, under the provisions of Section 8, Regulation XIV. 1797, are to be enforced by the attachment and sale of the property of the party against whom they are awarded.

April 8, 1831.

To the Provincial Court of Appeal, Dacca, dated the 15th April, 1831.

No. 591.

1814. Reg. XXV. Sec. 8.

In reply to your letter of the 7th ultimo, I am directed by the Court of Sudder Dewanny Adawlut to inform you, that the Court are of opinion, that a single judge of a provincial court is competent to direct a *zillah* or city judge to suspend the execution of an order passed in such summary suits as are appealable, and generally in all miscellaneous cases, until a decision shall have been passed on the appeal.

April 15, 1831.

To the Judge of Zillah Tipperah, dated the 6th May, 1831.

No. 592.

1829. Reg. X Sec. 3, and Sch. A.

In reply to your letter of the 7th ultimo, requesting the opinion of the Court of Sudder Dewanny Adawlut whether, with reference to Section 3, Regulation X. 1829, and Schedule A. therein alluded to, account books kept by mechants and shop-keepers for money paid or received, or for goods delivered, &c. &c. and not written on stamp paper, are to be admitted or not as evidence in a court of justice; I am directed to inform you, that there being no regulation which requires account books to be written on stamp paper, the court are of opinion, that they should be considered admissible as evidence, although written on unstampt paper.

May 6, 1831.

To the Benares Provincial Court of Appeal, dated the 6th May, 1831.

No. 593.

1814. Reg XXVII. Sec. 16.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 7th ultimo, submitting your opinion on the subject of the competency of the judge of the city court of Benares, to make a distribution of the *vakeels* employed in the courts of the *sudder ameens*.

2. In reply, I am directed to inform you, that the Court are of opinion that the judge is fully competent, under the provisions of Section 16, Regulation XXVII. 1814, to make such allotment and distribution of the pleaders attached to the courts of *sudder ameens* as may appear to him proper, and accordingly request that you recall the orders issued by you to the city judge on this subject.

May 6, 1831.

To the Commissioner of Circuit of the 15th Division, dated the 20th May, 1831.

No. 594.

1828. Reg. VIII.

In reply to your letter of the 14th ultimo, transmitting copies of correspondence with the magistrate of Mymoonsingh, relative to the power of a magistrate to try, under Regulation VIII. 1828, cases of affray which occurred previously to the enactment of that Regulation; I am directed to inform you, that in the opinion of the Court the magistrate

was competent to try the prisoner in question under the law referred to, although before its enactment some of the persons implicated in the same affray were tried by the court of circuit. Under these circumstances, the Court request that, in the event of your not having already tried the prisoners, you will be pleased to recall your order for the commitment of the prisoners, and direct the magistrate to carry into execution the sentence which he passed upon them.

May 20, 1831.

No. 595.
1807.
Reg. IX. Sec. 20.
1821
Reg. III. Sec. 2

To the Officiating Commissioner of Circuit for the 2nd Division, dated the 17th June, 1831.

In reply to your letter of the 26th ultimo, I am directed by the Court of Nizamut Adawlut to state, for the information of the acting magistrate of Agra, that the Court are of opinion that an assistant to a magistrate is not competent to take cognizance of complaints against European British subjects to the extent specified in cap. 53, Geo. 3rd, Section 105, and that the powers in question can only be exercised by a person possessing the full power of a magistrate.

June 17, 1831.

No. 596.
1800.
Reg. I.

To the Provincial Court of Appeal, Dacca, dated the 24th June, 1831.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 16th ultimo and its enclosures, requesting the Court's construction of Regulation I. 1800, as relates to the power of the provincial courts of appeal to receive appeal from orders passed under that regulation by the *zillah* and city courts; and in reply to acquaint you, that the Court are of opinion, that the provincial courts of appeal have no jurisdiction in the cases provided for by the regulation in question; but that the parties dissatisfied with the orders of the *zillah* and city judges must appeal to this Court. You will not of course consider this opinion as declaring that an appeal against a decision in a regular suit instituted against a guardian appointed under Regulation I. 1800, shall not be cognizable by a provincial court of appeal.

June 24, 1831.

No. 597.
1819.
Reg VIII.
Sects 8 and 9.

To the Judge of Zillah Burdwan, dated the 29th July, 1831.

In reply to the question contained in your letter of the 8th instant, viz. in what district the sale of a *putnee talook* is to take place, under the provisions of Regulation VIII. 1819, when the revenue of the estate of which it forms a part is payable to the collector of one district, and the estate situate, as far as the jurisdiction of the civil court is concerned, in another, I am directed to state that the Court incline to the opinion that the sale should be conducted by the register of the civil court within the jurisdiction of which the land is situate: but that a special appeal having lately been admitted on this question (among others), the Court decline giving a decided opinion on the question: it will be more fully considered when that case is brought to a hearing.

July 29, 1831.

Extract of a letter to the Commissioner of Circuit of the 4th Division, under date the 29th July, 1831.

No. 598.

Reg XVII. 1820 Sec. 3, Cl. 2.

PAR. 5. It may be remarked in this place, that the *darogha*, on receiving intelligence of the intended *suttee*, did not conform to the rule prescribed in the second clause of Section 3, Regulation XVII. of 1829, and that when he arrived at the village, after the *suttee* had been burnt, he acted unjustifiably, in ordering two of the inhabitants to be taken into custody before he had made any inquiry to ascertain who had aided in the performance of the sacrifice, instead of merely making the inquiry and reporting the result to the magistrate, as directed in the third clause of the section above cited.

July 29, 1831.

To the Judge of Zillah Shahabad, dated the 12th August, 1831.

No. 599.

1799 Reg VII. 1812 Reg. V.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 29th ultimo, requesting the opinion of the Court (in consequence of the collector of your district having objected to try such suits), whether the rent of lands held free of assessment can be realized by summary prosecutions.

2. In reply, I am directed to inform you, that the regulations in force, which relate to arrears and exactions of rent, apply equally to claims arising from rent-free land and from land paying revenue to Government, and that summary suits instituted under the above provisions are referrable to collectors, whether the land be rent-free or otherwise.

August 12, 1831.

To the Commissioner of Circuit of the 7th Division, dated the 23d September, 1831.

No. 600.

1830 Reg IV. Appointment of a public prosecutor, in the absence of the *vakeel* of the Government.

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of your letter of the 13th instant, requesting to be informed, whether you are at liberty to employ the *moulovee* of the late *zillah* court of the northern division of Bundlecund as law officer at the ensuing sessions for Humeerpoor; and also whether, in cases in which the prosecution may be conducted on the part of Government, it is necessary that the Government pleader at the Banda or Bundlecund civil court should attend during the sessions at Humeerpoor.

2. In reply, I am directed to inform you, that you are competent, under the provisions of Regulation IV. 1830, to nominate the *moulovee* of the late civil court to officiate as law officer at the ensuing sessions for Humeerpoor; and that the magistrate of the district is at liberty to direct any person, whom he may think fit, to officiate as government pleader for conducting the prosecutions on the part of Government.

September 23, 1831.

To the Commissioner of Revenue of the 11th Division, dated the 30th September, 1831.

No. 601.

1793 Reg XLV 1795 Reg VII Sec. 3.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 5th instant, submitting a question proposed by the collector of Behar, relative to the course to be pursued in serving notices of sales of lands by collectors, in satisfaction of decrees of court.

2. The rules contained in Section 3, Regulation VII 1825, are applicable, as stated by the collector, to sales conducted by the officers of the civil court; the collector however appears to have overlooked the provisions of Section 12, Regulation XLV. 1793; which the Court consider to be still in force, and applicable to sales by collectors in cases not coming within the third clause of Section 3, Regulation VII. 1825.

3. You are requested to make the necessary communication to the collector, and in the event of his having any further doubts on the subject, the Court, on their being specifically stated, will give them all due attention.

September 30, 1831.

No. 602.

To the Commissioner of Appeal, Cuttack, dated the 14th October, 1831.

1816 Reg V. Sec 5. Cl 2, 1814 Reg XXVII. Sec. 16.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 17th ultimo, requesting the Court's opinion as to your competency to refuse to admit the *vakeels* of the *zillah* court of Cuttack to conduct suits in your court as *mokhtars*, under the provisions of clause 2, Section 5, Regulation V. 1816.

2. In reply, I am directed to inform you, that the Court are of opinion that the practice of allowing the pleaders of the *zillah* court to conduct suits as *mokhtars* in your court is objectionable, for the reasons stated by you,* as well as because it is at variance with Section 16, Regulation XXVII. 1814, which provides, that the *vakeels* of one court shall not be allowed to plead in any other court; and that you are therefore competent to decline receiving *mokhtarnamahs* authorizing them to conduct suits in your court.

October 14, 1831.

No. 603.

To the Judge of Zillah Shahabad, dated the 21st October, 1831.

1821. Reg. IV Sec. 8. 1824 Reg XIV. 1819 Reg. II. 1807 Reg. IX. 1821. Reg. III.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 26th ultimo, requesting the Court's opinion, as to the competency of a collector to refer to his assistants summary suits referred to him by the civil court.

2. In reply, I am directed to inform you, that the Court are of opinion, that the third clause of Section 8, Regulation IV. of 1821, authorizes a collector to delegate to his assistant only his fiscal duties; and that it has no reference to the judicial duties delegated to a collector by a judge, either under Regulation XIV. 1824, Regulation II. 1819, or any other regulation; nor to the duties of magistrates vested in a collector, the delegation of which latter to an assistant would, in some cases, be contrary to the provisions of Regulation IX. 1807, Regulation III. 1821, and Regulation I. 1822.

October 21, 1831.

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* The reasons assigned were, the interruption it occasioned in the business of the commissioner's court, from the necessary attendance of the *vakeels* in the *zillah* court, and the temptation it gave the *vakeels* of the judge's court to instigate appeals to the commissioner.

To the Officiating Commissioner of Circuit of the 14th Division, dated the 11th November, 1831.

No. 604.
Property purchased with stolen money to be given to the owner of the money.

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of your letter of the 5th ultimo, requesting the Court's opinion as to the manner in which certain articles purchased, or supposed to be purchased, with money stolen from the prosecutor are to be disposed of.

2. In reply, I am directed to inform, that the Court are not aware of any regulation which prohibits the delivery to the prosecutor of any articles, which may be proved to your satisfaction to belong to him, or to have been purchased with his money; and to request, that you will accordingly exercise your discretion in the disposal of the property in question.

November 11, 1831.

To the Officiating Commissioner of Circuit of the 3rd Division, dated the 11th November, 1831.

No. 605.
1793 Reg IX Sec 3. 1808 Reg. VI. Sec. 3.

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of your letter of the 19th ultimo, submitting copies of correspondence, on certain points relating to persons admitted to bail, when committed for trial before a court of circuit.

2. In reply, I am directed to communicate to you the opinion of the Court, that the bail bond, in such cases, is in force until the trial be finally concluded, which it is not until sentence is passed; and that no person on bail should be committed to jail, until a final sentence involving imprisonment have been passed upon him.

3. The Court direct me to add, that the present reference does not appear to involve a question as to the general power of a commissioner of circuit of deciding on the propriety of the order of a magistrate for admitting persons accused of crimes to bail.

November 11, 1831.

Extract from letter to the Deputy Secretary to Government, in the Judicial Department, dated 11th November, 1831.

No. 606.
Exactions by Ghaut Manjees.

PAR. 9. The majority of the Court do not consider any interference on the part of Government called for, to put a stop to the evils alleged by the commissioner to arise from the present system of *ghaut mangees*. The *ghaut mangees* are in fact agents for hiring boats, and of course are entitled to make a charge for their trouble. Their services are doubtless useful to the community, and to prohibit their being employed, the Court think would be an unwise measure. The evils complained of by the commissioner may be put a stop to by the magistrates granting speedy redress to every one injured by the malpractices alluded to.*

November 11, 1831.

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* The reply of Government to the above reference was as follows

"With respect to the *ghaut mangees*, the local authorities must steadily refuse to recognize the claims "of the *ghaut mangees*, and ought promptly to punish every attempt illegally to enforce those claims, and

No 607.

Power of courts to refuse to acknowledge a *mokhtar* proved guilty of gross misconduct.

To the Joint Magistrate of Bogoorn, dated the 18th November, 1831.

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of your letter of the 31st ultimo, and in reply, to inform you, that the Court have determined that a magistrate is competent to refuse to acknowledge a *mokhtar* in his court, who may be proved guilty of any gross misconduct in the execution of his duty in that capacity.

November 18, 1831.

No. 608.

1816 Reg. XXII. 1817 Reg. XX. Sec. 21

To the Commissioner of Circuit of the 13th Division, dated the 18th November, 1831.

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of your letter of the 30th ultimo, and its enclosure from the magistrate of Rungpoor, and in reply to inform you, that the Court's circular order of the 22d July last* was intended to prevent the improper extension of the provisions of Regulation XXII. 1816, to places not contemplated in that regulation, and not to interfere with the establishments of *chakeydars*, which the *zumeendars* are bound by the provisions of Section 21, Regulation XX. 1817, to support.

November 18, 1831.

No. 609.

Summary orders of the Nizamut Adawlut are not binding on the civil courts.

To the Provincial Court of Appeal, Dacca, dated the 18th November, 1831.

I am directed by the Courts of Sudder Dewanny and Nizamut Adawlut to acknowledge the receipt of your letter of the 10th September last, forwarding a letter from Mr. Richardson, judge and magistrate of the city of Dacca, and copies of certain Persian proceedings, relating to the powers of a provincial court to interfere with orders issued by the Nizamut Adawlut to a magistrate through the commissioner of circuit.

2. The Court observe, that in consequence of the original interference of the late magistrate, in the case which gave rise to the reference, having been considered illegal, the Nizamut Adawlut annulled the proceedings of the magistrate and court of circuit, and ordered the restoration of the property to the state in which it was before the interference of the criminal courts. This interference having been withdrawn, the orders of the Nizamut Adawlut were fully executed, and the magistrate had no right, nor occasion, again to interfere in the matter. On the application of one of the parties to the civil court, to cause execution of the award of the arbitrator, Mr. Richardson was not authorized to refer the case from the civil to the criminal court. It was his duty, as civil judge, to decide whether the award of the arbitrators should be executed or not, without regarding the order of the Nizamut Adawlut, which could not affect orders

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* especially the detention of boats without the consent of the owners, or other acts founded on pretended "authority. Beyond this, the suppression of the custom must be left to the mutual interests of the "parties concerned in hiring and letting out boats."—*Extract par. 8, from a letter from the Deputy Secretary to Govt dated the 3rd January,* 1832.

* See Cir. Ord Nizamut Adawlut, No. 87, page 98, Vol. II. B M P. E.

passed by him in the civil court; and the provincial court was also competent, on an appeal being duly preferred to them from the orders of the judge, to pass such orders thereon as the nature of the case might in their judgment require.

November 18, 1831.

To the Commissioner of Circuit of the 13th Division, dated the 25th November, 1831.

No. 610.
1807 Reg IX Sec. 19. 1811. Reg VII. Sec 5.

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of your letter and its enclosures of the 5th instant, requesting the Court to favor you with their construction of Section 19, Regulation IX. 1807 and Section 5, Regulation VII. 1811.

2. In reply, I am directed to observe, that magistrates are authorized by the provisions quoted to punish litigious or groundless complaints by imprisonment not exceeding six months. This power should be exercised by the magistrates with the utmost discretion, and the commissioners of circuit, under the general powers vested in them, can receive appeals from the magistrate's decision, and pass such orders thereon as they may think just and proper.

November 25, 1831.

To the Judge of Zillah Behar, dated the 25th November, 1831.

No. 611.
1817. Reg XVII Sec. 14. 1824. Reg IV. Secs. 3 and 4.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 17th instant, requesting to be informed, whether persons charged with *perjury* before a register of deeds should be committed by the *zillah* judges, or prosecuted before the magistrate by the register of deeds.

2. The Court, considering the registry of deeds to be a "civil proceeding," contemplated by clause 2, Section 14, Regulation XVII. 1817, are of opinion, that in cases of *perjury* before the register of deeds, the judge and register should proceed in conformity with the provisions of that clause.

3. With reference to the 5th paragraph of your letter, the Court direct me to inform you, that a civil surgeon comes within the class of covenanted servants of the company; who, by Sections 3 and 4, Regulation IV. 1824, are authorized to officiate as register of deeds.

November 25, 1831.

Extract from a letter to the Commissioner of Circuit for the 7th Division, dated the 25th November, 1831.

No. 612.
1817 Reg. IX. Sec. 21.

PAR. 3. With reference to the instructions communicated to the magistrate, the Court observe, that they sanction the magistrate devolving on his assistant power to do acts which he does not possess under the provisions of Section 21, Regulation IX. 1807, that is, of deciding finally on cases of a heinous nature, provided his opinion be in favor of the prisoner. In cases which the magistrate may refer to his assistant for trial and decision, the latter may convict or acquit, according to his judgment. In cases, however, referred merely for report, he has no power to release prisoners, but should submit his opinion in the required report to the magistrate, who will pass the proper order. The Court

request, that you will recall your former instructions, and communicate this paragraph to the magistrate, for his information and future guidance.

November 25, 1831.

No 613.

1814 Reg XXVI. Sec 3. 1817 Reg XIX. Secs 7 and 8.

Resolution of the Court of Sudder Dewanny Adawlut, dated the 25th November, 1831.

On a consideration of the provisions of Section 3, Regulation XXVI. 1814, and Sections 7 and 8, Regulation XIX. 1817, the Court are of opinion, that in cases in which a summary appeal is admissible, under the section first mentioned, such appeal may be admitted, although the appellant may erroneously, or from other cause, have applied for the admission of a special appeal on stamp paper of the prescribed value; and that, in such cases, the stamp duty paid by the appellant on his petition shall, with the exception of two rupees, the value of the proper stamp for a petition of summary appeal be returned to him.

November 25, 1831.

No 614.

1819. Reg. VIII. Sec. 9. 1831 Reg VIII.

To the Judge of Zillah Jungle Mehals, dated the 16th December, 1831.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter, without date, received on the 8th instant, requesting the Court's opinion on certain points relative to the sale of *putnee talooks*, under Regulation VIII. of 1819.

2. In reply, I am directed to inform you, that the duty of holding sales of *putnee* and *durputnee talooks* is vested by Section 9, Regulation VIII. of 1819, in the judge and magistrate, in the absence of the register; but that all summary investigations, relating to the rent demanded by the *zemeendar*, must be conducted by the collector, under the provisions of Regulation VIII. of 1831.

December 16, 1831.

No 615.

1831 Reg VIII

To the Acting Judge of Purnea, dated the 23rd December, 1831.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 5th instant, and its enclosure from the collector of your district, requesting the Court's opinion as to the competency of a collector to take cognizance of resistance to the attachment of property distrained for arrears of rent, under Sections 19 and 20, Regulation XVII. 1793, and Section 9, Regulation VII. 1799.

2. In reply, I am directed to observe, that the Court, on the 9th August, 1806,* construed the sections above quoted as providing that investigations made under these rules should be tried as *summary suits*: and that, as the whole of the jurisdiction in cases of summary suits for arrears of rent, formerly vested in the civil courts, has been, by the provisions of Regulation VIII. 1831, transferred to the collectors of revenue, the Court are of opinion, particularly with reference to the provisions of section 4 of that regulation, that the collector is competent to try all cases of resistance of his process of attachment connected with such summary suit, except when actual breaches of the peace may occur, in which event the case must be tried by the magistrate.

December 23, 1831

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* See No 23, page 7.

To the Magistrate of Zillah Mymensingh, dated the 30th December, 1831.

No. 616.

1793 Reg IX Sec. 4 1803 Reg VI Sec 4.

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of your letter of the 2nd instant and its enclosures, and in reply, to inform you that the Court do not consider a magistrate competent to make a person repay, or restore money, or other property, obtained by false pretence or extortion, the said money or property not having come into the hands of the Court; nor to compel the offender to execute a *mochulka*, binding himself in a penalty to repay or restore the same.

December 30, 1831.

To the Magistrate of Zillah Mirzapore, dated the 30th December, 1831.

No. 617.

1807 Reg. IX Sec 9. Cl. 1

In reply to your letter of the 9th instant, I am directed by the Court of Nizamut Adawlut to inform you, that a magistrate is authorized to release the accused, if he consider a homicide to have been accidental, or justifiable under the Mahomedan law; and that if he be doubtful as to the law, he should apply to his law officer for assistance.

December 30, 1831.

END OF THE FIRST VOLUME.

Printed at the Bengal Military Orphan Press, by G. H. Huttmann.

LIBRARY

CONSTRUCTIONS

OF THE

REGULATIONS OF GOVERNMENT

BY THE COURTS OF

Sudder Dewanny and Nizamut Adawlut.

618—619.

14 } Jany. 1831.
21 }

To the Officiating Commissioner of Circuit for the 3rd Division, dated 14th January, 1831.

No. 618.
1809
Reg. VIII. C. 2. Sec. 5. C. 2, Sec. 7.

In reply to your letter of the 27th ultimo, I am directed by the Court of Nizamut Adawlut to inform you, that as the zillah and city magistrates are expressly empowered by the latter part of the second clause of Section 5, and by clause 2, Section 7, Regulation VIII. of 1809, to make temporary appointments of persons duly qualified to perform the duty of the principal ministerial native officers of their courts, as well as of record keepers and the whole of the native officers of their establishments receiving a salary of 10 rupees and upwards, the Court are of opinion that the persons so appointed to officiate can legally act as officers of the Court, immediately on their nominations, (before their appointments have been reported to the commissioner of circuit;) but that the magistrates are bound immediately to report the same for the commissioner's information.

To the Commissioner of Circuit for the 15th Division, dated 21st January, 1831.

No. 619.
1796
Reg. XI Sec. 4.
1804
Reg. III Sec. 4
1817
Reg. XX. Sec. 26.
1825
Reg XII.

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of your letter of the 10th instant forwarding an original letter from the magistrate of Dacca Jelalpoor, and requesting the Court's opinion whether a magistrate can punish the evasion of his process of arrest as a contempt of court.

2. In reply, I am directed to state that, as the course of procedure against persons evading the process of a criminal court is distinctly laid down in Section 4, Regulation XI. 1796, and Section 26, Regulation XX. 1817, the magistrate's views of expediency cannot justify his deviating from that course, and to request that you will instruct him to conform to it in future. The Court desire me to add, that the provisions of Regulation XII. of 1825, are applicable solely to contempts committed in open court.

1807. Reg. VIII.

3. With reference to the remark of the magistrate in the 4th paragraph of his letter that he invariably makes that person responsible for the affray who profited by it, whether, present or absent, and the establishment of that fact, his guide in apportioning the punishment; I am directed to observe, for his information and future guidance, that the punishment would be illegal, unless there were proofs that the person so punished had been guilty of instigating or conniving at the affray.

January 21st, 1831.

From the Commissioner of Circuit for the 8th or Benares Division, dated 13th January, 1831.

No. 620. 1807. Reg. IX. Sec. 3.

I am led to trouble the Court with this address for reasons which the accompanying copy of a letter from the magistrate of Juanpoor will explain.

2. A thanadar having reported a dispute about land, the magistrate directed the thanadar to take mochulkas from the parties not to commit a breach of the peace, and in consequence of one party demurring to execute a mochulka at the thana, he was fined. Having preferred an appeal, I reversed the order, as I did not consider that the magistrate had the power to require any person to enter into a penal recognizance before the thanadar, without at least hearing what he had to say. Moreover, I considered that such an order gave the thanadars a power which was very liable to be abused.

3. I do not call into question the power of a magistrate to require a person to execute such a mochulka (when it may appear necessary) in his presence, after he has been heard in his defence.

From the Magistrate of Zillah Juanpoor to the Commissioner of Circuit for the Division of Benares, dated 10th July, 1831.

I have the honor to acknowledge the receipt from you of a Persian robukary dated the 1st December 1830, in the case of Udhur Singh petitioner, and with reference thereto to solicit the favor of your obtaining for me the opinion of the Court of Sudder Nizamut Adawlut regarding the power of a magistrate, on its appearing from the report of a police darogha or otherwise, that disputes exists concerning lands, &c., likely to terminate in a breach of the peace, to direct mochulkas for keeping the peace to be taken from either party. Such mochulkas, I have reason to believe, are commonly ordered to be taken by magistrates on similar occasions, and they are of course not intended to interfere with any summary suit which may be preferred by the parties for dispossession.

To the Commissioner of Circuit for the 8th Division, dated the 21st January, 1831.

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of your letter and its enclosures, under date the 13th instant, submitting a reference from the magistrate of Juanpoor, relating to the power of a magistrate to direct a darogha to take moochulkas to keep the peace in certain cases, and to inform you that the Court consider

the orders passed by you in the case alluded to, to have been quite proper and conformable to the regulations.

January 21, 1831.

From the Judge of Zillah Etawah, dated 10th January, 1831.

I request you will solicit from the Court of Sudder Dewanny Adawlut an answer to the following question: No. 621. 1814 Reg XXVIII. Sec. 11.

In the event of a suit instituted by a pauper being dismissed with costs, and the proceeds arising from the sale of his property not being sufficient to pay the fees due to his vakeel with costs and fees awarded in favor of the opposite party, and the law expences due to Government, in what order should the several claims be satisfied?

To the Judge of Zillah Etawah, in reply, dated 21st January, 1831.

In reply to your letter of the 10th instant, requesting the instructions of the Court of Sudder Dewanny Adawlut relative to the order in which the several claims against a pauper plaintiff whose suit has been dismissed, should be satisfied, I am directed by the Court to inform you that, after payment of the vakeel's fees, you should exercise your discretion in satisfying any other claims in such manner as may appear to you equitable, leaving any persons deeming themselves aggrieved by your order to their ordinary course of appeal.

January 21, 1831.

To the Commissioner of the 15th Division, dated the 28th January, 1831.

In reply to your letter of the 18th instant, I am directed by the Court of Nizamut Adawlut to inform you that a magistrate is not at liberty to punish any of the offenders in a case originally cognizable by him, if circumstances of aggravation render it necessary for him to commit one or more of the persons implicated in the same offence for trial before the Commissioner of Circuit. No. 622.

January 18, 1831.

Extract of a letter addressed to the Commissioner of Circuit for the 3rd Division, in reply to his letter of the 15th January 1831, *dated the 4th February*, 1831.

2. In reply, I am directed to request you will inform the acting magistrate that in all cases of affray attended with wounding, if the wounds have been inflicted with a sword, the case should be committed for trial before the commissioner of circuit, and that in all cases of affray attending with wounding or beating punished by himself, he should insert in the column of explanations and remarks of his monthly statements a brief statement of the No. 623. 1828 Reg VIII.

case and a description of the personal injury sustained by the wounded or beaten persons, in order that the Court may be enabled to judge of the propriety or otherwise of the sentence.

February 4, 1831.

To the Commissioner of Circuit for the 17th Division, dated 25th February, 1831.

No. 624.
1826
Reg III.

In reply to your letter of the 10th ultimo, I am directed by the Court of Nizamut Adawlut to communicate to you their opinion, that a civil prisoner cannot be confined in fetters, unless he be suffering under a criminal sentence for having broken jail; in other words, fetters cannot be imposed on a civil prisoner merely to ensure his safe detention in jail. I am also directed to refer you to Sections 4 and 5 of Regulation III. of 1826, and to observe that the second clause of the latter Section points out a specific mode of punishment for any offence committed by a prisoner confined under civil process, which may not exceed the general powers of a magistrate.

February 25, 1831.

To the Commissioner of Circuit for the 17th Division, dated 25th February, 1831.

No. 625.
1790.
Reg XI Sec 2, C. 2.
1804
Reg. III Sec 2, C. 2.
1807
Reg IX. Sec. 29.

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of your letter of the 24th ultimo, requesting the opinion of the Court whether the appeal from an order of the magistrate of Sylhet for attaching lands in his district, on the requisition of the magistrate of Dacca Jelalpore, should be preferred to you or to the commissioner of circuit of the Dacca division; and to inform you, in reply, that as the attachment was the immediate act of the magistrate of Sylhet, the appeal is cognizable by you.

February 25, 1831.

To the Commissioner of Circuit for the 15th Division, dated 25th February, 1831.

No. 626.
1829
Reg X. Sec 10.
C. 1, 7 & 11.

In reply to your letter of the 17th ultimo, requesting to be furnished with the orders of the Court of Nizamut Adawlut respecting the completion of the trials referred to in paragraphs 4 to 8 of your letter of the 30th July, which you were requested by the 3rd paragraph of mine of the 3rd August, to postpone till further orders, I am directed by the Court to transmit to you for your information and guidance the accompanying copies of a letter from the Secretary to Government in the Judicial Department dated 7th September last, enclosing an extract from the proceedings of Government in the General Department, containing the Government's construction of the provisions of Regulation X. of 1829, which relate to embezzlement by stamp venders, and of a letter addressed by order of the Court to the Secretary in reply.

From the Secretary to Government, Judicial Department, to the Acting Register of the Sudder Dewanny Adawlut, dated 7th September, 1830.

I am directed by the Right Honorable the Governor General in Council to desire you will lay before the Court of Sudder Dewanny Adawlut the accompanying copy of an extract from the proceedings of Government in the General Department under date the 24th ultimo, for the purpose therein stated

Extract from the Proceedings of Government in the General Department, under date the 24th August, 1830

Read an extract from the proceedings of Government in the Judicial Department, dated 17th August, 1830

The Governor General in Council on referring to the rules of Regulation X. 1829 cited by the Nizamut Adawlut, apprehends that there has been some misconception as to the intent and object of the provisions contained therein There is no rule or enactment in Regulation X. 1829, prescribing any penalty for secretly making away with stamps from the store or for an embezzlement of any kind The law in respect to these acts remains as heretofore for the offences being punishable by the ordinary courts and process of law, it did not appear necessary to insert any new provisions on the subject in the consolidated regulation

The penalty referred to in clause eleven, Section X Regulation X. 1829, was designed to enable the collector or other superintending officer to compel a rendering of account and delivery of the balance of store and cash upon an occasion of removal or resignation, so as to prevent a party so removed or resigning from defying the collector and avoiding the rendering any account until compelled by a regular suit. As the law now stands the vender, removed or resigning, must render account under liability to the penalty of the Section quoted, but if upon being rendered and the balance delivered according to it, the account be discovered to be false, covering embezzlement or taking credit for remittances never made, the punishment for such acts must be by prosecution for the frauds as criminal offences, under the general regulations, not by the rule of the clause cited, which would not apply

Ordered, that a copy of the above observations be communicated through the Judicial Department to the Sudder Dewanny Adawlut, with a request that the opinion of the Court may be taken on the construction of the law with reference thereto.

From the Acting Register of the Nizamut Adawlut, to the Secretary to Government in the Judicial Department, dated the 24th September, 1830.

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of your letter of the 7th instant, forwarding an extract from the proceedings of Government in the General Department, under date 24th ultimo, requesting that the opinion of the Court might be taken as to the construction of clause 7, Section 10, Regulation X. 1829,

relating to the embezzlement of stamps by the venders, with reference to the above resolutions.

2. In reply, I am directed to state that, in the opinion of the majority of the Court, if a true account of the receipts and of the proceeds of the sale of paper entrusted to him be rendered by a vender of stamps, only the penalty prescribed in the eleventh clause of Section X. Regulation X. 1829, is exigible for the non-delivery of paper or money due according to the account; but that if the account rendered be false, the vender is liable, under the general regulations, to a prosecution in the criminal court for fraud and embezzlement.

February 25, 1831.

No. 627.

1807 Reg. II. Sec. 4, Cl. 4. 1821 Reg. III. Sec. 3.

Extract from a letter from Commissioner of 13th Division, dated 29th January, 1831.

I beg the favour of the Court to decide whether a deposition taken on oath in the private dwelling of a sudder aumeen, distant nearly three miles from the court-house, is legal evidence; and if so, whether a witness can be punished for perjury, in the event of it afterwards appearing that what he stated on oath in the dwelling house of the sudder aumeen was false. I make the reference in consequence of a case of the kind having been committed for trial before me at the present sessions by the magistrate of Rungpore

2. I take this opportunity of requesting to know whether the Court do not consider making over petitions, when first presented, to the sudder aumeens, for report, an objectionable proceeding. I have always been of opinion that a magistrate should hear and decide on every petition himself, and pass an order on it in the presence of the petitioner Sending the petition to a sudder aumeen for report, appears to me likely to lead to much abuse, and to be attended with no advantage except lessening the magistrate's trouble, which, when the importance of the duty is considered, should not be thought an object. If the Court agree with me, I propose desiring the magistrate to discontinue the practice, and perform the duty himself. I always found time to do it, by devoting the whole of Saturday to receiving and hearing petitions.

Extract of a letter addressed to the Commissioner of 13th Division, dated 28th February, 1831.

2. In reply to your first question, I am directed to observe that a deposition taken in the manner above stated is illegal, and cannot be received; consequently the deponent cannot be considered liable to the penalties of perjury if such deposition be false.

3. In reply to your second question, I am directed to refer you to the Court's circular letter dated the 24th July, 1829, prohibiting the practice you advert to, and to desire that in the event of the magistrate's having acted in opposition to those orders, you will call upon him for explanation.

February 28, 1831.

Extract paragraph 2, from a letter addressed on the 4th March, 1831, to the Commissioner of Circuit for the 19th Division, in reply to his letter of the 22d February, 1831.

Par. 2. The Court observe that the wounding in the affray of which Suroop Sing, No. 3 of the statements of prisoners punished by the magistrate of Midnapore, having been inflicted with a sword, it was not competent to the magistrate to pass final sentence; and accordingly request that you will call for the proceedings in the case and pass such orders thereon as may appear proper. No. 628. 1828. Reg. VIII.

March 4, 1831.

Extract of a letter from the Commissioner of the 15th Division, dated the 24th February, 1831.

Par. 2. I take this opportunity to ask if a commissioner of circuit be competent to modify a sentence passed by himself under particular circumstances; or whether the case should invariably be reported for the consideration and orders of the Nizamut Adawlut. No. 629.

Extract of the Court's reply, dated the 4th March, 1831.

Par. 2. With reference to the 2nd paragraph of your letter I am directed to observe, that having no authority to alter a sentence once passed, you should refer all similar cases for the orders of this Court.

March 4, 1831.

Extract of a letter to the Moorshedabad Provincial Court of Appeal, dated the 11th March, 1831.

Par. 3. With reference to the questions contained in the 2nd and 3rd paragraphs of the judge's letter, I am directed to observe that it is not required by the regulations that a copy of the deed of mortgage should be served on the mortgagee, but only a copy of the application of the mortgagee to the judge of the civil court for the issue of the prescribed notice. No. 630. 1806 Reg. XVII. Sec. 6.

March 11, 1831.

Extract of a letter to the Commissioner of Circuit of the 13th Division, dated the 25th March, 1831.

Par. 3. I am further directed to observe that the issuing of a perwaneh by the magistrate to the government pleader directing him to communicate with the law officer, over whom, in his capacity of law officer of a court of circuit, he had no control, on a matter relating to a futwa delivered in a trial before the court of circuit, was highly improper and unjustifiable; and you are requested to instruct the magistrate that the Court trust that they will not have occasion to notice such objectionable interference on his part in future. No. 631.

March 25, 1831.

To the Joint Magistrate of Bugoora, dated 8th April, 1831.

No. 632.
53 Geo III cap 155, Sec. 105.

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of your letter of the 22nd ultimo, reporting a case in which an indigo planter confined in stocks four individuals, one of whom died in confinement, for the periods of 30, 34 and 60 days, in his factory, and requesting the Court's opinion as to whether you are empowered to sentence the planter to a punishment of two months in each case, or must commit the case for the investigation of the grand jury.

2. In reply, I am directed to observe that magistrates are empowered by Section 105 of 53d Geo. III. Cap. 155, to punish European British subjects when convicted of assault, forcible entry, or other injury accompanied by force not amounting to felony.

3. In reply to your question as to your competency to award a separate punishment for each offence, the Court can only observe that if the offences are charged separately, there seems no reason why the sentences on conviction should not be likewise separate. I am desired however to point your attention to the statute law above referred to, which authorizes confinement only in default of payment of fine.

4. Should you, after a full investigation of the case, be of opinion that the offender ought to be brought to trial before the Supreme Court, you will of course proceed in the usual way, reporting the case for the information and orders of Government.

April 8, 1831.

To the Acting Magistrate of Allahabad, dated 29th April, 1831.

No. 633.
1824
Reg XV.

In reply to your letter of the 4th instant, requesting the opinion of the Court of Nizamut Adawlut on certain points connected with the Court's construction of Regulation XV. 1824, I am directed to inform you that you are not authorized to take cognizance, under that regulation, of a dispute between a zumeendar and his moostager or farmer; and that a "jaidadee tumusook" in possession of a moostager does not render the case of a quarrel between him and his zumeendar cognizable under the said regulation.

2. With reference to your question, whether a quarrel between a lumberdar and shikumee sharer is cognizable in the Foujdaree Court under the above regulation, I am directed to state, that if the dispute regarded a defined portion of land, the exclusive possession of which was claimed in proprietory right by each party, it would be cognizable under the said regulation; but not so, if the dispute was merely about the extent of the interest in the joint estate which each party claimed.

April 29, 1831.

Extract from a letter addressed to the Commissioner of Circuit for the 15th Division, on the 6th May, 1831, in reply to his letter of 25th April, 1831.

No. 634.
1817.
Reg XVII. Sec. 5.

Par. 6. With reference to your remark on this case, that 'there remained but one 'witness for the prosecution, which, as a matter of course, fell to the ground,' the Court

direct me to observe that if you believed the testimony of that witness it would have been sufficient to have warranted your convicting the prisoners, referring the trial for the orders of the Court had the futwa acquitted the prisoners on the ground of one witness being insufficient for a conviction under the Mahomedan law.

May 6, 1831.

To the Judge of Dinagepore, dated 20th May, 1831.

No. 635. 1829. Reg X. Sch. A. Art. 31.

In reply to your letter of the 12th instant, I am directed by the Court of Sudder Dewanny Adawlut to inform you, that all leases and counterparts *(pottahs* and *kuboolyuts)* granted to, or taken from the actual cultivators of the soil, should, under the exemptions noticed in Article 31 of Schedule A., Regulation X. of 1829, be written on unstampt paper, whether Government be or be not a party in the transaction.

May 20, 1831.

To the Judge of Backergunge, dated 20th May, 1831.

No. 636. Writ of assistance.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 22d July last, requesting, with reference to mine of the 7th May, 1830, further instructions regarding the execution of the decree of the Supreme Court in the suit of Radha Madhub Banerjee versus Balmokund Thakoor.

2. In reply, I am directed to forward to you the accompanying copies of a letter from the Deputy Secretary to Government in the Judicial Department dated 19th ultimo, and of its enclosures, from which and the concluding paragraph of the Advocate General's letter of the 21st July, 1828, you will observe the course you are bound to pursue in giving effect to the writ of assistance of the Supreme Court and which you are directed to adopt accordingly.

3. With reference to the 9th paragraph of the Advocate General's letter of the 3d February last, I am directed to add that the investigation to be made into any claims of the nature therein mentioned by individuals, not parties to the suit before the Supreme Court, may be received and conducted in a summary form, as authorized by the general regulations in force in executing decrees of the established Mofussil courts.*

May 20, 1831.

To the Magistrate of Mymensingh, dated 27th May, 1831.

No. 637. 1800 Reg I. 1805. Reg VIII. Sec. 29, C. 6 to 14.

In reply to your letter of the 2d March last, requesting the Court's opinion 'whether 'the clandestinely marrying a ward, (also a minor,) placed under a guardian appointed by 'the Court of Sudder Dewanny Adawlut under Regulation I. 1800, without the consent 'of such guardian, and guardians authorized to contract marriages among Mahomedans

* The opinions of the Advocate General alluded to in this letter are printed in C. O. 20th May 1831. No. 31, Vol. 2. of S D A. Circulars.

'called "wullee oo-nikah," and contrary to the express orders of the civil court, would 'be an offence cognizable under the general regulations by the criminal courts,' I am directed by the Court of Nizamut Adawlut to transmit to you the accompanying copy of a futwa of two of the law officers of the Court, delivered by them, after a perusal of the copy of the roobukaree held by you in the civil court on the 19th February last, in the matter of Syud Gohur Ali, petitioner, versus Moolvee Abdool Ali (which accompanied your letter under acknowledgment), and a petition and certain papers filed by the said Moolvee Abdool Ali; and to inform you that as no offence appears to have been committed under the Mahomedan law, the Court do not consider the case cognizable in the criminal court.

Translation of a Futwa of two of the Law Officers of the Court, in the case of Syed Gohur Ali, petitioner, versus Moolvee Abdool Ali.

It appears from the proceeding of the judge of zillah Mymensingh dated 19th February, 1831, that while the marriage ceremony of Mosst. Noor-oon-nissa Khatoon, daughter of Mosummat Chand Bebee deceased, with Moolvee Tumeezodeen was suspended in consequence of a difference of opinion between the judges of the Court of Appeal and zillah judge; an order having been issued by the judge forbidding the marriage of the said Noor-oon-nissa with any person whatever until an order should be issued to that effect, Moluvee Abdool Ulee, son of Moluvee Burkutoolah Khan, without giving information to the said gentleman or obtaining his permission, and without any intimation to Gholam Abool Lys Chowdree, the half brother of the said Noor-oon-nissa who is also her guardian, married her. It is also understood from a petition of the said Noor-oon-nissa that she has arrived at the age of puberty and that she with her own free will and consent married Moluvee Abdool Ulee aforesaid. Under these circumstances, and as the said Noor-oon-nissa acknowledges that she has attained to the age of puberty and that this marriage has taken place agreeably to her own free will and consent, and as the judge's order was passed under the supposition of her being a minor, her marriage with Abdool Ulee, although it may have taken place without information given to the judge and guardian, or obtaining their permission, is valid and binding according to law, and Abdool Ulee aforesaid cannot in consequence of this marriage and such disobedience of orders be considered criminal or liable to punishment.

May 27, 1831.

Extract from a letter addressed to Government on 27th May, 1831, on the Commissioner of 9th Division's Circuit Report for the 2d Sessions of 1830.

No. 638
1807
Reg. II. Sec. 3, Cl. 1.

Par. 12. On the subject of the commissioner's remarks on the crime of perjury I am directed to submit the following observations.

13. The Court consider the commissioner's representation of the prevalence of wilful perjury a good deal exaggerated, and they cannot concur with him in thinking that the alleged frequency of the crime is in any degree owing to the defective state of the

law. They are of opinion that the law is in no wise in fault, and they are persuaded that if witnesses were examined in the courts of the magistrates, as they should be, by the magistrates themselves, and closely questioned as to every apparent inconsistency in their deposition, care being taken at the same time to make them understand the questions asked, and to write down the answers given by them so as to convey exactly their intended meaning, the crime would not be so often committed with impunity as the commissioner says it is.

14. The Mahomedan law as stated by the commissioner is not the law by which the criminal courts are guided in trials for perjury, and he should have informed himself better on the subject, ere he imputed the frequency of acquittals to the deficiency of the law. To warrant a sentence of punishment, the Bengal code only requires that the proof adduced, (it being provided by Clause 1, Section 3, Regulation II. 1807, that the crime of perjury may be proved either by the free and voluntary confession of the accused, or by the testimony of credible witnesses, or by strong circumstantial evidence,) shall be sufficient to satisfy the judge that the crime, defined to be perjury, has really been wilfully committed by the accused prisoner.

15. The observations of the commissioner that the judge before whom the evidence of witnesses to a charge of perjury is taken is more capable of forming a just estimate of the value of their testimony than a judge who only reads the written depositions; and that the delay which the reference of trials for perjury to this Court occasions takes away from the effect of the punishment; apply equally, if at all, to all trials as well as to trials for perjury.

16. The Court cannot think the reasons given by the commissioner for not having committed the witnesses noticed in the 58th paragraph of his report to stand their trial for perjury sufficient. If he thought there was proof sufficient to warrant a strong presumption of their having wilfully committed the crime, it was incumbent on him to commit them for trial; and the Court cannot but consider his failure to do so, with reference to the reason stated, a perverse dereliction of duty.*

May 27, 1831.

To the Acting Magistrate of Allahabad, dated 10th June, 1831.

No. 639. Cir Or 10 Dec 1830

I am directed by the Court of Nizamut Adawlut to acknowledge receipt of your letter of the 15th April last, submitting the document relating to the establishment of a new bazar in Mouza Pata.

2. The Court are of opinion that in the event of any new dispute regarding the right to establish *haats* arising, you should be guided by the circular order of the 10th December last, but that in the case noticed by you the order of the Benares court of circuit, dated 8th March, 1823, from which no appeal has been preferred, must be upheld, until set aside by a decision in a regular civil suit.

June 10, 1831.

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* See another letter on this subject, date 2nd September, 1831, No. 656.

To the Officiating Commissioner of Circuit for the 2nd Division, dated 10th June, 1831.

No. 640.
1824
Reg. XV.

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of your letter of the 26th ultimo, submitting the explanation of the acting magistrate of Agra of his reasons for referring for report to the sudder ameens cases instituted under Regulation XV. 1824; and to state in reply, for the information of the acting magistrate, that the Court are clearly of opinion that he is not competent, under the regulation, to refer such cases to the sudder ameens, and accordingly direct that he discontinue the practice.

June 10, 1831.

From the Judge of Patna Provincial Court of Appeal to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated the 27th May, 1831.

No. 641.
1814.
Reg. XXVI. Sec. 2, Cl. 6.

We beg leave to submit the enclosed papers as specified in the list of them for the consideration of the Sudder Dewanny Adawlut.

2. Mr. Bird, the former judge, rejected a petition for a special appeal from Mutra Opudia and others, who, in consequence, presented a petition to this Court. It appeared that the judge had not held any proceedings on the occasion, and had merely written an order for the rejection of the special appeal on the corner of the petition; without even stating whether or not the petitioners or their vakeel were present. The Court therefore annulled the judge's order and directed him to hear the petition of special appeal again, to hold regular proceedings, and to pass an order for its admission or rejection.

3. Mr. Bird having been removed, the present judge re-heard the petition of special appeal, and rejected it on the ground that this court was incompetent to annul the order of the former judge, which was final.

4. There can be no doubt that had the former judge rejected the petition of special appeal in a regular manner his order would have been final, under Clause 6, Section 2, Regulation XXVI. of 1814; but the mode in which it was passed, being essentially irregular, brought the cause within the meaning of Clause 3 of the above section and regulation.

5. The order passed by the present judge appears to be irregular; for, if he doubted the competency of this Court, he ought to have suspended his proceedings, and made a reference to this Court, as directed by Section 2, Regulation XXII. 1803. (Sec. 2, Reg. X. 1796.)

6. The present judge observes that it was the custom of the Goruckpoor court to write orders on petitions of special appeals, instead of holding proceedings; and we must add that this custom extends to almost every other miscellaneous matter, which makes the passing of an order on a miscellaneous case extremely difficut and tedious.

To the Judges of Patna Provincial Court of Appeal, dated 10*th June,* 1831.

In reply to your letter of the 27th ultimo requesting to be informed whether, under the circumstances stated, you were competent to direct the judge of Gorruckpoor to rehear a petition for a special appeal, which had in your opinion been irregularly dismissed;

I am directed to inform you that the Court of Sudder Dewanny Adawlut are clearly of opinion that as the original order dismissing the petition was irregular, in as much as it was contrary to regular and established practice of the courts, you were competent to direct the judge to rehear it; and they desire that the judge be instructed accordingly.

June 10, 1831.

To the Commissioner of Circuit for the 17th Division, dated 10th June, 1831.

No. 642.
1807
Reg IX
Secs 4, 5 and 6.

In reply to your letter of the 23d April last, I am directed by the Court of Nizamut Adawlut to inform you that appellants from the decisions of magistrates are at liberty to employ whom they please to conduct their appeals. The Court are however of opinion, that the agents so employed should secure their remuneration before undertaking the business, and should be given to understand that, if they neglect to do so, no assistance to enforce payment of it afterwards will be given.

June 10, 1831.

From the Commissioner of 15th Division, dated the 11th June, 1831.

No. 643.
1803.
Reg LIII Sec. 8,
Cl 3.

I beg you will submit for the consideration of the Court of Nizamut Adawlut the accompanying original letter to my address from the magistrate of zillah Dacca Jelalpore dated the 4th instant.

2. The case of the prisoner referred to will be found in the statement of prisoners punished without reference at the 2nd sessions of 1830, No. 1.

3. The circumstance of the prisoner's dwelling house being so close to the town of Furreedpore did escape me when passing sentence; and, though concurring in the propriety of the measure suggested by the magistrate, I conceive I have not now the authority to alter the sentence already passed. The superior Court has this power, and I accordingly beg to recommend that the period of imprisonment awarded to the prisoner be carried into effect in banishment.

To the Commissioner of 15th Division, dated 17th June, 1831.

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of your letter of the 11th instant and its enclosure, suggesting that the sentence of 14 years imprisonment passed by you at the last sessions of jail delivery for zillah Dacca Jelalpore on Beesye, convicted of burglary and theft, be carried into effect in banishment to another district; and in reply to inform you, that the Court, on consideration of the circumstances stated, have been pleased, under the power vested in them by the fifth Clause of Section 8, Regulation LIII. 1803, to direct that the prisoner Beesye be removed to the jail of the city of Dacca, and there confined till the expiration of his sentence.

June 17, 1831.

24 June, 15 July, } 1831.

Extracts from a letter to the Moorshedabad Provincial Court of Appeal, dated 24th June, 1831.

No. 644. 1806 Reg XVII. Sec. 8.

Par. 2. In reply, I am directed to state that the Court deem it sufficient to observe that the provisions of Section 8, Regulation XVII. 1806, expressly require that a copy of the application of the mortgagee to foreclose should accompany the perwaneh issued to the mortgager; and that, in their opinion, the mortgagee, on filing his application should be directed immediately to deposit the tulubana of the peon through whom the perwaneh is issued to the other party, that the order for issuing the same be passed without delay.

June 24, 1831.

To the Commissioner of Circuit for the 7th Division, dated 1st July, 1831.

No. 645. C. O. 3 June, 1829.

In reply to your letter of the 18th ultimo, requesting to be informed whether magistrates can, under certain circumstances, be permitted to transact the current business of their offices in their private dwellings, the Court deem it sufficient to observe that, when sitting as a criminal judge, a magistrate must sit in the established court-house; but that the Court deem it unnecessary to enter into the general question of the powers of a magistrate out of office.

July 1, 1831.

To the Calcutta Provincial Court of Appeal, dated 8th July, 1831.

No. 646. 1808. Reg. XIII Sec. 11, Clause 3.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 2nd instant and its enclosures; and in reply to inform you, that the Court are of opinion that the construction of Clause 3, Section 11 of Regulation XIII. 1808, suggested by the judge of Burdwan, is correct, and that it rests with the zillah judge, to whom the appeal from a sudder ameen's decision is preferred, to order or stay the execution of the decision appealed from; and not with the register,* to whom the appeal is referred by the judge for trial.

July 8, 1831.

To the Judge of Purnea, dated 15th July, 1831.

No. 647. 1830. Reg. VI.

In reply to your letter of the 1st instant, I am directed by the Court to inform you that the provisions of Regulation VI. 1830, regarding the deposit of the subsistence money of persons confined in the civil jails, apply to the officers of Government as well as to private individuals.

July 15, 1831.

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* Though the office of Register has been abolished, this rule is still applicable to the Principal Sudder Ameens.

648—651.

22 July, 3 August, } 1831.

To the Judge of Purnea, dated 22d July, 1831.

The Court of Sudder Dewanny Adawlut having again had before them your letter of the 3d May last, together with that of the 7th ultimo and its enclosures, direct me to communicate to you the following remarks :

No. 648.
1825.
Reg. VII. Sec 5, Cl 4 and 5.

2. The Court are of opinion, with you, that the circumstance of an estate being recorded in the collector's records in the name of another person than him against whom the execution of the decree was sued, is not sufficient to warrant the collector to decline to bring to sale, unless a claim were preferred or objection offered, in which case the collector should proceed in the manner laid down in Clauses 4 and 5, Section 4, Regulation VII. 1825.

3. The reason assigned by the commissioner for not ordering the sale of Talooka Rampoor Koosbalee ; viz. that the office of the collector of Purnea affords no accurate information, is in the opinion of the Court invalid, as it is incumbent on the collector to procure the information. The Court hold the same opinion regarding the reason assigned for not ordering the sale of the talookahs of Boochgowh and Deogowh, (viz. that no division can be made of these talookahs,) for the collector was bound to make the requisite division, or satisfy the Court that it cannot be done.

July 22, 1831.

To the Commissioner of Circuit for the 18th Division, dated 22d July, 1831.

In reply to your letter of the 14th instant, I am directed to acquaint you that the Court have held that under the provisions of Section 6, Regulation XVIII. 1817, and Section 4, Regulation III. 1827, a magistrate is competent to entertain and investigate a charge of corruption preferred against an officer on the establishment of the commissioner of revenue and circuit.

No. 649.
1817.
Reg. XVIII. Sec 6.
1827
Reg III. Sec 4.

July 22, 1831.

To the Officiating Commissioner of Circuit for the 5th Division, dated 22d July, 1831.

In reply to your letter of the 5th instant, requesting to be informed whether, in the event of a prisoner's pleading "guilty," the trial should proceed in the same manner as if he had pleaded "not guilty ;" I am directed to inform you that the Court consider it advisable, in such a case, that you should proceed in the trial in the ordinary course.

No. 650.
1793.
Reg IX Sec. 47.
1803
Reg. VII. Sec. 15, Cl. 1.

July 22, 1831.

To the Judge of City of Dacca, dated 5th August, 1831.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you dated 12th ultimo, accompanied by certain original Persian proceedings relating to the case of Usmutoonissa versus Gour Gopal, guardian of Moomtazoodeen minor.

No. 651.
1793.
Reg V Sec. 4.
1803
Reg III Sec. 16, Cl 4.

1800. Reg I 1805 Reg VII Sec 29, Cl. 8 to 14

2. The state of the case, as detailed in your letter, appears to be as follows. Bafutoonissa, widow of Muneeroodeen, held the estate. Having no children, she adopted Moomtazoodeen, a minor, in 1225 or 1226 B. S., making over to him her property, real and personal, by deed of gift, and continued in possession as manager for her adopted son through the instrumentality of Hamud Meean her gomashteh, until her death in 1225 B. S.; after which the gomashteh continued, as heretofore, to manage the estate until his death in 1236 B. S., when Nuzzuroodeen, brother of Bafutoonissa, (to whose daughter, Usmutoonissa, Bafutoonissa had married her adopted son Moomtazoodeen,) took possession, in right of his daughter under a deed of settlement alleged to have been executed at the time of the marriage by Moomtazoodeen with the consent of Bafutoonissa. Moomtazoodeen being a minor, a guardian, Gour Gopal, was appointed at the instance of Aklakoollah, brother of the minor. This guardian now claims possession of the estate for his ward, under the deed of gift of Bafutoonissa. Under these circumstances, the Court, presuming Nuzzuroodeen to have taken possession of the estate on the death of the gomashteh, are of opinion that under Section 4, Regulation V. 1799, his possession cannot be disturbed unless, on the institution of a regular suit by the opposite party, he be unable or neglect to give the security which in that case might be required from him.

August 5, 1831.

To the Commissioner of Circuit for the 18th Division, dated 5th August, 1831.

No. 652. 1823 Reg VI 1824 Reg XI Reg XV

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of your letter of the 1st instant, and in reply to questions put by you to inform you that the Court are of opinion that the magistrate can interfere in cases of indigo disputes, only when they may be cognizable under Regulation XV. of 1824, as construed by the court's circular letter of the 27th December last, and that in such cases he may depute his assistant under the provisions of Regulation XI. 1824; but that in disputes regarding indigo, which may not come within the provisions of Regulation XV. 1824, the enquiry must be made and final decision passed in the civil court under Regulation VI. 1823.

August 5, 1831.

To the Deputy Secretary to Government in the Judicial Department, dated 12th August, 1831.

No. 653. 1819 Reg X Secs 39 and 41.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 8th March last, transmitting an extract from the resolutions of Government in the Separate Department, under date the 1st March last, and the original correspondence therein referred to with the Board of Salt and Opium, regarding a construction of certain provisions of Regulation X. of 1819; and requesting the Court to prepare an explanatory enactment, should they consider the provisions in question not sufficiently clear.

2. In reply, I am directed to state that the Court are of opinion that Sections 36 and 41 of Regulation X. 1819, clearly recognise a chullaun, granted for a portion of a lot of salt for which a rowannah may have been taken out, as an instrument equally valid as a rowannah to protect the salt covered by it from confiscation: and that an explanatory enactment on that point is unnecessary.

3. With regard to the construction of the said regulation maintained by the Board of Salt and Opium, I am directed to observe that it would warrant the confiscation of a boat laden with salt, the owner of which, trusting to the validity of a chullaun, might have hired it without any design to aid in a smuggling transaction, an injustice which it cannot be supposed the framer of the regulation intended to legalize.

4. I am further directed to observe that the equitable construction of the regulation adopted by the Court is not, as it may at first appear to be, open to the objection of being calculated to defeat the object of the law, by enabling the holder of a rowannah to transport a greater quantity of salt under its cover than the quantity specified in it; as an endorsement on the rowannah, shewing the quantity of every portion of the lot described in it, for which a chullaun may be granted, is all that is required to prevent its serving to protect more than the portion remaining entitled to its protection.

August 12, 1831.

To the Judge of Purneah, dated 19th August, 1831.

No. 654.
1800.
Reg. I.
1805.
Reg. VIII Sec. 29, C 8 to 14

In reply to the questions contained in your letter of the 8th instant, I am directed to inform you, that the guardian of a minor being his representative is entitled to receive the minor's share of the proceeds of an estate, if managed by a surberakar; and that the zillah judge as no authority to interfere with him in the disposition of the minor's property.

August 19, 1831.

Extract from a letter addressed to Government on 26th August, 1831, *on the Commissioner of 16th Division's Circuit Report for the 2d Sessions of* 1829.

No. 655.
Assessment of villagers for the payment of chowkeydars.

Par. 11. The assessing the inhabitants of the villages for the support of a village police establishment of chowkeydars is authorized by no regulation, and is consequently illegal, and should immediately be prohibited, and the magistrate directed to confine his interference with the chowdeydars paid by the people to those cases in which he is authorized to interfere by the existing regulations. The commissioner is of course at liberty to propose any regulation he may deem proper to legalize the practice which obtains in Chittagong.

August 26, 1831.

To the Deputy Secretary to Government in the Judicial Department, dated 2d September, 1831.

No. 656. 1807 Reg II

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of your letter of the 30th ultimo, requesting the Court to ascertain from their law officers whether the exposition of the Mohummudan law of perjury, as given by the commissioner of circuit for the 9th division, in his letter of the 9th February last, viz. that it is impossible to convict a person of perjury unless he confess, is correct or not.

2. I am also directed to request that you will lay before the Honorable the Vice President in Council, the accompanying copies of two letters from the commissioner under dates the 22d September 1830 and 23d June last, on the same question of perjury, together with a copy of a minute recorded by Mr. Ross on the 16th ultimo, on the subject of those letters.

3. The Court have not deemed it necessary to require any further opinion from their law officers, as the question was maturely considered several years ago, and a joint futwa was then given by the three law officers of the Court, containing a full exposition of the law on the subject. A copy of that futwa, with an English translation, is submitted herewith, and it will be found to uphold the opinion already expressed by the Court, that a conviction of perjury may be had without the confession of the accused, and consequently that the view taken by the commissioner is erroneous. In further confirmation, and as shewing that practice has conformed to the law as declared in the futwa abovementioned, the Court also submit copies of some futwas given at subsequent periods, as well by the law officers of the courts of circuit, as of this Court.

4. Under these circumstances, and as the provisions of Regulation II. 1807, recognize the same principle, the Court see no necessity for any further declaratory law on the subject, especially as a reference can always be made to this Court, in cases of a difference of opinion between the commissioners of circuit and their law officers.

5. In the 22d paragraph of his letter of the 23d June last, the commissioner requests to be informed whether false depositions taken by native officers are perjury or not? The majority of the Court hold that a false deposition on oath taken by a native ministerial officer in the presence of the magistrate, (in the manner prescribed in the Court's circular order of the 12th December 1809,) relative to some judicial proceeding, and upon a point material to the issue thereof, is perjury. Messrs. Ross and Rattray desire me to state that the circular order above quoted allows the depositions of prosecutors and witnesses to be taken by the ministerial officers of the Foujdary Courts in the room in which the magistrate is sitting while engaged with other business, which is in fact allowing the depositions to be taken by the ministerial officers instead of by the magistrate, by whom, according to law, they should be taken, and that this mode of taking depositions not being authorized by the regulations, they (Messrs. Ross and Rattray) are of opinion that a legal conviction for perjury cannot be grounded on a deposition so taken.

6. With regard to the commissioner's deprecation of the Court's censure, for not committing certain witnesses for perjury, whom he considered to have been guilty of that

offence before him, the Court direct me to observe that the perversity imputed to him was inferred from the declaration in the 59th paragraph of his letter of the 9th February last, that because he referred a case and the accused were acquitted by the Court, he had not ordered the commitment of other persons whom he considered guilty of perjury; and because, at the end of the 61st paragraph, he declared, that until a law was passed in conformity to his own view of the matter, he doubted if any thing could make him consider it expedient to hazard an order to commit for perjury unless the criminal confessed, thereby virtually announcing his resolution not to order a commitment for perjury, although bound to do so in the performance of his duty as a criminal judge, and although he must have known, that, even under his own exposition of the law, it was competent to this Court to punish for the offence, in opposition to an acquitting futwa. Under the explanation however now offered, the Court are satisfied that he was actuated by the considerations stated by him in the case referred to.

Translation of a Question put to the Cazee ool Coozzat and Mooftics of the Sudder Court, Calcutta, and of their Reply.

Question.—Whereas, from a futwa delivered in court in the year 1799, defining and determining the different sentences of Hudd, Kissaás and Tazeer; and upon consulting the law authorities thereon quoted, namely, the Buhr-i-rayuk, the Moheet, the Ushbah and Nuzayer, and the futwas of Kazee Khan, it appears, that notwithstanding the existence of a doubt (Shoobu) which bars Hudd and Kissaás, Tazeer may be inflicted upon strong presumption (*Zun-i-Ghalib*;) whether it be founded on evidence which does not possess the Nisab; or upon strong circumstances (Quraeen-i-Quveyeh,) by which the firm opinion of the Hakim is established.

The point in question, therefore, is, whether in cases of false evidence where there is a strong suspicion (Zun-i-Ghalib), arising either from the disagreement in the evidence of one or more witnesses; or the evident contradiction of a witness's depositions before different courts; or from strong circumstances (Quraeen-i-Quveyeh) occurring during the trial; or upon any other grounds; the Hakim can pass sentence of Tazeer; or under what other circumstances Tazeer may be inflicted in cases of perjury, according to the Mahomedan law.

Within a fortnight therefore a futwa comprehending a full view of the law on the subject in question, must be drawn up with the utmost possible attention, and laid before the court, in order that the necessary instructions may be thereupon issued to the judges and law officers of the different zilla and circuit courts.

Reply.—According to the text of the law, there are three ways in which sentence may be passed; 1st.—Upon evidence (Beyunu;) 2dly.—Upon confession (Iqrar;) 3rdly.—Refusal—the prisoner's refusing to take the oath on pleading not guilty (Nukool)

And in some of the futwas of Ibnool Furs, it is stated, that judgment may be given upon strong circumstances (Quraeen-i-Quveyeh) which, in the opinion of the judge, nearly amount to a certainty.

In the commentaries (Shoorooh) two other rules are also laid down; One—Qusamah, which demands Deeyut, the other the knowledge of the Cauzee; which last, however, on account of the degeneracy of the age cannot be admitted.

All the law authorities however concur in stating that in cases of Hudd, sentence cannot be passed upon Nukool; except for larceny, when the stolen property must be restored; but amputation (Kitau) cannot be inflicted.

In cases of murder (Kissaás-i-Nufs), if the prisoner refuse to take the oath, according to Aboo Huneefu he should be kept in confinement until he makes confession, or takes the required oath: in cases of retaliation for personal offences not affecting life (Kisas-i-Atraf) only Urah shall be awarded; but according to the doctrine of the two disciples, Urah is requisite in both cases. Judgment cannot be passed upon a refusal to take the oath (Nukool) in cases of Tazeer when the rights of God are concerned, which branches out of Hudd.

So that there are only three grounds upon which sentence can be given in cases of Tazeer, involving the rights of God; 1st.—Confession (Iqrar); 2d—clear evidence (Byuneh); and 3dly—strong circumstances (Quraeen Quveyeh).

Now false evidence, which incurs Tazeer as an offence against God, is a matter on which judgment cannot be passed on evidence (Byuneh) for a claim to that effect is the assertion of a negative: whereas evidence has been constituted for the purpose of establishing an affirmation, accordingly you will find in Law Compendiums, which take the Hedayu for their guide, that the term of false evidence is restricted to one who confesses that he has given false evidence.

But it appears from the Kefayu and other law authorities, that a person may be otherwise convicted of false evidence than by his own confession: for instance, a man gives evidence to the murder of a person, who afterwards turns out to be alive, or one deposes that he has seen the new moon, and thirty days elapse without the appearance of the succeeding new moon; or whenever in this, or any other way, a person is guilty of any palpable falsehood, such as giving evidence to a negative, he may be considered as a false witness However some of the commentators on the Kunz maintain that Tazeer cannot be inflicted for false evidence, except the party confesses that he wilfully told the lie, and that the punishment is not otherwise due.

But the author of the Buhur-ool-Rayuk asserts that Tazeer may be inflicted, both when the party confesses his falsehood, or when it is otherwise reduced to a certainty in the opinion of the judge.

Hence it is evident, that the judge has the power of inflicting Tazeer in cases of false evidence, where he is, in his own mind, convinced of the guilt of the party accused, upon whatever grounds that conviction may be formed—and in like manner almost all the

sentences of the law, rest entirely upon the judgment of the Cazee (or Hakim), whether that be formed upon evidence, confession, refusal to take the oath, or strong circumstances.

Yet the acting upon the firm conviction, or strong presumption of the judge, is a point which has been admitted in cases of Tazeer, like that of the discretionary power with which the Government is invested for the preservation and the welfare of the country.

False evidence may therefore be proved in three ways: 1st.—Confession (Ikrar): 2d.—Strong circumstances (Quraeen-i-Quveyeh) which in the opinion of the judge reduces the matter to a certainty; as, when the point in question turns out directly contrary to the evidence, or the judge be convinced in his own mind of the falsehood of the witness by his deposing to a negative: 3rdly.—Strong circumstances, or direct inference, by which the judge entertains a strong presumption.

After quoting the above authorities, and adjusting these premises, we proceed to observe, that if the deposition of a witness be at variance with the claim of the plaintiff, or with the statement of another witness, or if the plaintiff accuse his witnesses of falsehood; although in either of these three cases the evidence must be rejected, yet the witness shall not thereby be considered as false. The same argument holds good where the evidence of a single witness differs from that of several others, because suspicion falls equally on both parties; unless in the above case it so happen, that other inferences be drawn to the conviction of this single witness, which, together with the deposition of the other witnesses, may establish his guilt in the opinion of the Hakim; as for instance, when the records of the province convict the witness of falsehood, or when the circumstances of the case are such as cannot be reconciled with the deposition of the witness: in such cases the judge can, upon his strong presumption, inflict Tazeer on the witness so offending.

In like manner, when the evidence of two sets of witnesses of the legal number disagree, neither party are liable to Tazeer, unless one party be convicted of falsehood by strong circumstances; in which case the judge can inflict Tazeer upon his own presumption, as also in cases where evidence is given to a negative, whether by one or more persons, the falsehood of such evidence being clearly ascertained, the judge is authorized to pass a sentence of Tazeer. Thus the rule is not restricted to a mere contradiction.

Where there exists a contradiction in the evidence of a witness before one or more courts and the difference be such that the two statements can in no way be reconciled with each other, for instance, if a witness depose that he saw A. kill B., mentioning the time and place in which the murder was committed, and afterwards, in the same court or some other, shall state that he did not witness the transaction; this is a direct retraction of his former evidence, and he cannot make the plea of forgetfulness: on the contrary he must acknowledge what he first stated to have been erroneous, and if this retraction be

made under a proper sense of repentance and contrition, he is not liable to Tazeer; but if with contempt and boldness, he is liable to Tazeer, and the Hakim is left to decide upon his own discretion what were the man's motives.

But if he first depose that he did not see A. kill B. on such a day at such a place; and afterwards, before the same court, or another, should state in evidence that he was an eye witness to the transaction, mentioning both the time and place thereof, although his declarations be at variance with each other, and his evidence be inadmissible from the suspicion of falsehood thereby incurred, yet he is not liable to Tazeer. Because he may urge as a plea, that what he first stated was through forgetfulness, and that he afterwards recollected the circumstance; moreover he may also excuse himself by saying that, at first, he was induced to conceal the truth, from fear and alarm, but that he has now revealed the whole truth.

Now the case differs widely where the witness first deposes to his having seen the fact, and subsequently denies his knowledge of it, for he cannot then plead that he, through forgetfulness, spoke of having seen it, that is, he cannot say that ignorance of the matter having been impressed on his mind, had been forgotten, but that he afterwards recollected his forgotten ignorance; for ignorance is continuative, and cannot be impressed on the mind at one time, and forgotten at another. It should also be remarked that in the second case where the witness deposes that he did not see the homicide at such a time and place, he does not give evidence to a negative, but merely states that he himself knows nothing of the matter. This cannot be considered as evidence to a negative (Shuhadut bur nufee) which would be liable to Tazeer.

If however the difference be not very great, and does not amount to a direct contradiction, but merely vary in point of time, place, or instrument, or any thing else which is not very material; such as for instance in the case above quoted, if the witness deposes that he saw A. murder B. at Bussorah on a Friday, and afterwards recollects himself and states that it was on a Thursday; or that the murder was committed at Koofa, and not Bussorah; if such like difference occur before the same court, and the witness pleads forgetfulness at the time, his evidence may be admitted, but not if the contradiction occurs before another court; yet in neither case is he liable to Tazeer.

If the deposition refers to any saying, and not to any action, such as a confession and the like, in that case any variation in the evidence respecting the time or place does not render it inadmissible; because the expression may have been used more than once.

When the evidence of one or more witnesses is highly improbable, and bordering close upon impossibility: such as a man deposing, that at midnight he saw A. shoot B. with an arrow, which entered at one side of the body and went out at the other, and occasioned B.'s death; adding that when A. shot the arrow, he (the witness) was standing twenty yards from the spot where the fact took place and saw it. Now if the night was very dark, so as to render it exceedingly improbable that he should have been able to have discerned such minute particulars even at a less distance than twenty yards, the judge

may, in that case, upon his own strong conviction, pass sentence of Tazeer on the person or persons so offending.

In like manner also, if it be proved in the course of the trial, that between the spot where the transaction took place, and where the witness states himself to have been standing when he saw the murder, there was such an impediment as must necessarily have obstructed his sight; in this case also the judge may decide upon the falsehood, and inflict Tazeer.

If the defendant brings evidence of such an exception to the plaintiff's witnesses, as may amount to a legal disqualification; namely, an exception which must be admitted as comprehending the right of God or the right of man; and the exception is proved and affects the right of God, which is Hudd; some lawyers, amongst whom is the author of the Buhur ool Rayik, say that the plaintiff's witnesses shall suffer Hudd, that their legal incompetency as witnesses is proved in the course of the proof of Hudd, and that their evidence shall be rejected; but there not being any proof to establish either the certainty, or a strong presumption of the falsity of their evidence, they are not liable to Tazeer. Yet some others, who consider the right of God as common both to Hudd and Tazeer, maintain that the witnesses shall suffer Tazeer because of this right as the right of God, not on account of the proof of falsehood; and that their evidence shall be rejected because of their profligacy.

If some exception comprehending the right of man is proved, as where, for instance the defendant declares that he had compromised with the plaintiff's witnesses for ten dirhums not to give false evidence, and notwithstanding that he had given them the money they gave false evidence, and he insists on the money being returned to him, in this case, the villainy of the plaintiff's witnesses is proved, their evidence rendered inadmissible; and the magistrate is competent to inflict Tazeer on his firm conviction of their being guilty of falsehood.

If the exception be proved, by shewing that the plaintiff admitted the profligacy of his witnesses, the evidence of the plaintiff's witnesses shall be rejected, yet they are not liable to Tazeer as the falsity of their evidence is not proved. Yet, in analogy to the case of the exception which comprehends the right of the individual, it may be said that when the exception is proved by evidence to the confession of the plaintiff, that his witnesses were not present at the transaction, (and the witnesses to that confession further depose that on the day the transaction took place at Bussorah, they saw the plaintiff's witnesses at Koofa), the falsehood of the plaintiff's witnesses being thus proved in the course of proving the confession, they may be subjected to Tazeer. and in like manner where a witness's confession of his own falsehood is proved in the course of proving the plaintiff's confession of the falsehood of his witnesses; as where the witnesses of the defendant state that at the time the plaintiff acknowledged the evidence of his witnesses to be untrue, they expressed their surprise, and asked his witnesses how the case stood, they replied saying that it was true they had given false evidence: the plaintiff's witnesses are liable to Tazeer.

With regard to any objection to the evidence, namely, an objection from the defendant that a partnership exists between the witness and the plaintiff, or that they stand in the relationship to each other of father and son, husband and wife, or that the witness from some worldly motive is his (the defendant's) enemy, or that he is a slave, or has suffered Hudd for slander, and the defendant shall make good his objection and substantiate his charge by evidence, the depositions of the plaintiff's witnesses become inadmissible; but they are not thereby liable to Tazeer. But an objection touching the competency of a witness is in all respects similar to an objection to his character.

The sentence of Tazeer in the above cases does not depend upon the proof of the falsehood being given after judgment has been passed, so far from it that Tazeer may be inflicted for giving false evidence, whether the falsehood is discovered after a decree has been given, or before the evidence is acted upon.

All the learned agree in sentencing a false witness to Tazeer, with the exception of Aboo Huneefu, who thinks public exposure is sufficient. But this is, in some cases, a more severe punishment than a private flogging. The two disciples in addition to public exposure require also flogging and confinement as stated in the Futeh-ool-Kudeer.

The author of the Tunvees-ool-Ubsar, following the opinion of the author of the Kunz, lays it down as a rule that, in conformity to the doctrine of Aboo Huneefu a false witness should be publicly exposed: so that the rule is applicable to every case. But Aboo Mahommed restricts the opinion and tells us that a difference of opinion prevails in cases when the witness's motives for retracting his evidence are unknown, for Aboo Huneefu is merely for publicly exposing the offender; whilst the two disciples have gone so far as to say that he should be flogged. But if it appear that he is sorry for his misconduct and expresses great contrition, they all agree that he is not liable to Tazeer; but that where he seems to have retracted his evidence without altering his conduct the Tazeer shall be flogging, and Shums-ool-Ameh tell us that the Tusheer or public exposure meets with the sanction of the two disciples.

It is evident therefore that the two disciples authorize public exposure, flogging and confinement; the Cazee may therefore inflict either of these punishments as he may think proper. This is also according to the Munh-ool Ghuffar.

The result is this, that Tazeer depends generally on the firm opinion of the magistrate who is competent to exercise a just degree of power for the purpose of ridding the land of wickedness and corruption, and with a view of consulting the public welfare.

If, therefore, on account of the wickedness of the times, it should become a common practice for witnesses to give false evidence, so as to affect and endanger the persons, property, or lands of individuals; the Hakim is not only empowered, but it is a duty absolutely incumbent on him, to inflict Tazeer by flogging and confinement on such witnesses, as shall in his firm opinion, founded upon strong circumstances, (Quraeen i-Quveych) or on any other grounds, be proved to have given false evidence. Greater

severity should also be exercised towards false witnesses in case of Hudd and Kissaas, than where merely property, &c. is concerned.

There are three ways by which you may be satisfied as to the falsehood of a witness.

One is, when the witness himself confesses the falsehood of his evidence; either before the same magistrate in whose presence he gave that evidence, or before some other magistrate; for if he made the confession before any body but a magistrate, and the defendant wish to prove that he did so, he shall not be allowed; though according to some, who maintain both Hudd and Tazeer to be incurred in cases where the right of God is concerned, he may prove such a confession. The case above supposed implies a full retraction. If he first depose to his having been an eye-witness to a transaction, and shall afterwards state that he did not see it take place, this is a virtual retraction, and renders the offender liable to Tazeer.

Now the retraction, which incurs Tazeer, is such as is attended with obstinate and hardened contempt; and not when the person, so offending, shews contrition for his error; for in this latter case the learned agree that he is not liable to Tazeer. It remains for the Hakim to exercise his discretion in deciding as to the motives of the person making such retraction, whether it were made from hardened contempt, or a deep sense of contrition.

If there shall be strong circumstances (Qurseen-i-Quveyeh) to warrant the conclusion that the retraction has been made from the fear of God, and a dread of disgrace in the eyes of the world, the person so retracting shall not be liable to Tazeer.

If on the other hand there be strong circumstances to warrant the conclusion that the person so retracting had neither the fear of God or man before his eyes, nor any hesitation in giving false evidence, or in retracting it, or if it appear that he made the retraction from some enmity arisen between him and the plaintiff subsequent to his former deposition, or from the apprehension that his falsehood would come to the knowledge of the magistrate, and that he would be punished accordingly; in these several cases, he is liable to suffer Tazeer.

Another mode of ascertaining the falsehood of a witness is when the matter deposed to turns out contrary to the evidence.

The third mode is when evidence is given to an unqualified negative.

The following instances may serve as examples of the manner in which a strong presumption is formed of the falsehood of a witness.

When the evidence of a witness is at variance with the evidence of one or more witnesses, and the testimony of the latter is corroborated, while that of the former is confuted by the documentary evidence of the plaintiff, and the circumstances of the case are such as cannot consistently be reconciled with the evidence of that witness. Also where the evidence of two parties of witnesses (each possessing the Nisab) is at variance, and one party depose to an unqualified negative: the party so offending shall be liable to Tazeer, or though it be not evidence to a negative, if strong circumstances shall falsify the evidence of either party, such party shall be liable to Tazeer.

Or if the evidence of one or more witnesses, although not at variance with that of other witnesses, be highly improbable · for instance, if a person deposes that on a very dark night he was an eye-witness to a transaction accompanied with several minute particulars from such a distance as to render the fact of his having seen highly improbable and almost impossible; or it appear that there was some impediment to the view, between the spot where he was standing, and where the transaction took place (so that he could not possibly have seen it). Or if it be proved by the evidence of the defendant's witnesses that the witnesses of the plaintiff had made an arrangement with the defendant and had from him received the sum of ten dirhums not to give false evidence, and had notwithstanding given false evidence. Or that for the purpose of giving false evidence, the said witnesses had been taken into the plaintiff's service, and had received the wages of ten dirhums out of the defendant's property, which was in the hands of the plaintiff.

Or if in the course of proving the plaintiff's confession, that his witnesses were not present at the time of the transaction, it be proved by the witnesses to the said confession that not only were the plaintiff's witnesses not actually present, but were at some other place, so distant as to have rendered it impossible for them to have been at both places the same day.

Or if when attempting to prove that the plaintiff had admitted that his witnesses had given false evidence, it be also proved that they themselves made a confession of their own falsehood.

(Signed) Mohummud Nujum-ooddeen Khan, Cauzee-ool-Coozat.
Moofty Mohummud Rashid.
Moofty Suraj-ooddeen Ali Khan.

September 2d, 1831.

To the Commissioner of Circuit for the 12th Division, dated 2d September, 1831.

No. 657.
1807.
Reg. IX. Sec 123.

The Court of Nizamut Adawlut have had before them your letter dated the 27th June last, submitting for their consideration and orders, your correspondence with the acting magistrate of Monghyr and certain Persian proceedings, in the case of Bhowanee Pershad versus Sheikh Peer Buksh and others.

2. The main question referred for the Court's consideration is, whether the commissioner, in calling for an explanation in a criminal case decided by the joint magistrate, was competent to direct that the prisoners sentenced by the joint magistrate should be admitted to bail, until a final order had been passed by the commissioner. This question has been repeatedly decided by the Court in the affirmative.—(Vide Cons. No. 489, page 207, vol. 1, dated December 12, 1828.)

3. The Court observe that the joint magistrate appears to have taken an erroneous view of your order, in supposing it to be a reversal of his own. Had it been such, the grounds of the reversal would of course have been stated: but as it was to enlarge a prisoner on bail pending the appeal, a simple order was sufficient and should have been immediately carried into effect.

4. The Court do not think it necessary to notice the various other points discussed in the correspondence, except the objection of the joint magistrate to your having received the petition of appeal from his orders from Dost Mahomed and two others, calling themselves brothers of the prisoners, on plain paper. On this subject the Court direct me to observe that no petitions should be received by you on plain paper except from prisoners confined in the criminal jail.

1814 Reg XXVIII. Sec. 19.

September 2d, 1831.

From the Commissioner of Circuit, 16th Division, to the Register of the Presidency Court of Nizamut Adawlut, dated the 15th August, 1831.

No. 658.

With reference to your letter of 27th May, 1831, covering copies of correspondence between the Court and the magistrate of Hooghly, and conveying the expression of the Court's opinion that I shall not deem it necessary to require the attendance of the witnesses alluded to therein, I beg to submit for the Court's consideration and orders that the case in which the attendance of the witnesses has been required is one of forgery, committed for trial under the directions of the civil court. The deed alleged to have been forged bears date subsequent to the death of the party who is said to have signed it, and the law officer considers vivâ voce evidence before the court of the death of the alleged signer as absolutely necessary to conviction. If the Court of Nizamut Adawlut will however be pleased to order the Hooghly magistrate to take evidence of the death of Doorga Pershad Mokerjee, and to allow the record of that evidence to be admitted in proof before my court, I can proceed with the trial and refer the case to the Sudder Nizamut on the Cauzee's futwah, which, as the case now stands, will be for an acquittal for want of the proof alluded to. I await the Court's instructions.

1793. Reg. IX. Sec. 47. 1808. Reg. VII. Sec. 15, Cl. 1.

To the Commissioner of Circuit, 16th Division, dated the 16th September, 1831.

I am directed by the Court of Nizamut Adawlut, in reply to your letter of the 15th ultimo, to inform you that the Court cannot authorize the evidence to the fact of the death of Doorga Pershad Mokerjee, which appears to be a point material to the issue of the case of Ram Chunder and other prisoners, to be taken by the magistrate of Hooghly in the absence of the accused; and to request that you will proceed to dispose of the case, which appears to have been postponed beyond the legal term of two sessions, without further delay.

September 16th, 1831.

To the Assignee of the Estate of Messrs. Palmer and Co., dated the 30th September, 1831.

No. 659.

I am directed by the Court of Sudder Dewanny Adawlut to inform you that the factory of Serecole and its dependencies, situate in Zillah Jessore, was pledged by the late Firm of Messrs. Palmer and Co. as security for the execution passed by the Court in

1797. Reg. XVI. Sec. 4.

30 Sept } 1831.
21 Oct. }

favor of the respondent in the case of Baboo Ramchurn, moktar of Baboo Madhab Suhai and Baboo Benee Suhai, heirs of Baboo Doarka Doss deceased, appellant, versus Joye Kishen Doss, respondent, on its being appealed by Baboo Ramchurn to His Majesty in council.

1803 Reg. V. Sec. 33. 1814 Reg. XXVI. Sec 13.

2. The said factory being situated within the jurisdiction of the Court, cannot, under the regulations of Government, be sold or otherwise disposed of but with the aforesaid lien on it. I am therefore directed to request that in the event of its being sold or otherwise disposed of by you, you will inform the intending purchaser or person to whom it may be intended to transfer it otherwise than by sale, that the Court have a lien on the factory until the appeal to the King in council is determined in favor of the respondent, or, in the event of a decision being passed in favor of the appellant, until it shall have been fully satisfied by the respondent.

N. B. A copy of this letter was, on the same date, communicated to the judge of Jessore, with instructions, in the event of the factory being advertised for sale, to issue a proclamation declaratory of the lien thereon.

September 30th, 1831.

To the Judge of Zillah Shahabad, dated 21st October, 1831.

No. 660.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 15th ultimo, soliciting the Court's opinion as to whether proprietors of estates are entitled to jureemana or penalty equal to the interest on arrears of land rent.

2. In reply, I am directed to inform you that the Court are not aware of any regulation which authorizes proprietors to demand more than the rent claimable by them, with the legal interest thereon from the date on which it may be payable. The suit however, before you appearing to be a regular original suit, which may eventually be brought judicially before the Court, they desire that you will decide it according to your own judgment, leaving the party dissatisfied with your decision to appeal therefrom.

October 21st, 1831.

To the Commissioner of Circuit for the 13th Division, dated 21st October, 1831.

No. 661.

1823. Reg VI. 1824 Reg. XV.

In reply to your letter of the 19th instant, forwarding a further reference from the joint magistrate of Pubna, as to the power of a magistrate to attach indigo crops, I am directed by the Court of Nizamut Adawlut to request you will refer the joint magistrate to the order contained in my letter of the 5th August, [see Cons. No. 652 p. 20 of this volume] and to inform him that in cases in which he cannot act himself he must refer the parties to the civil court.

October 21st, 1831.

Resolution of the Nizamut Adawlut held on the 9th December, 1831.

No. 602. 1831 Reg. IX. Sec 3. C. 2, Sec. 4.

Resolved—That by "Criminal Trials" in Section 3, Regulation IX. 1831, shall be understood the cases of persons tried for a criminal offence by any court of inferior jurisdiction: cases in which interference with any order issued by an inferior court prior to its final judgment in such trials, may appear necessary, to be brought before the court as its general English sittings.

2. That in the cases alluded to in Clause 2, Section 4, Regulation IX. 1831, a futwa need not, unless specially required, be taken from the law officers of the Nizamut Adawlut; but this rule is to be considered applicable only to trials called for by the Court, and not to those referred to it by a commissioner of circuit or a session judge; in which latter a futwa shall be required as heretofore.

December 9th, 1831.

From the Judge of Jungle Mehals, dated 5th December, 1831.

No. 603. 1800. Reg I. 1805 Reg VIII. Sec 29, Cl. 8 to 14.

Buwanee Sing, a jageerdar residing in the zumeendary of Pachete, died, leaving a widow and an infant son his sole heir; the widow after a short time applied to this court to appoint a person, named Damodhur Doss Ghosaeen, the guardian of her infant son, stating her inability to manage his estate.

2. The widow being the natural guardian of her infant son, it appears to me, that she is competent to appoint whomsoever she pleases to take care of him or manage his estate, without any reference to the civil court, and I beg to be informed if the Sudder Dewanny concur in this construction of the regulations.

3. The result of my enquiries into the case under notice is a firm conviction that it would be most for the benefit of the minor to farm the estate during his minority, and if the interference of this court is authorized or called for, it is the mode of management, subject of course to the approval of the Sudder Dewanny, that I should recommend.

4. The several courts of wards are empowered by Regulation VI. 1822, to adopt farming or any other form of management, and I conclude therefore the civil courts when acting in that capacity must be considered to possess the same powers. Previously however to taking any steps in the business I beg to be favored with the opinion of the Sudder Court.

To the Judge of Zillah Jungle Mehals, dated 16th December, 1831.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 5th instant, requesting the Court's opinion as to the propriety of your interference in the appointment of a guardian of the minor Buwanee Sing.

2. In reply, I am directed to inform you that if the estate of the minor is a joint undivided estate, you should, on the application of the minor's mother, appoint a guardian under the provisions of Regulation I. 1800, and report your nomination for the confirmation of the Court.

3. With reference to the 3d paragraph of your letter the Court are of opinion that guardians or managers appointed under Regulation I. 1800, must be left to exercise

their own judgment as to the best mode of managing the estates of the minors committed to their care.

December 16th, 1831.

From the Commissioner of Circuit, 15th Division, dated 8th December, 1831.

No. 664.
1807
Reg IX Sec. 19.
1825.
Reg IV Sec. 2, Cl. 1.

I have the honor to transmit herewith for the consideration and orders of the Nizamut Adawlut copy of a letter addressed to me by the magistrate of the city of Dacca, on the subject of the defect in the state of the law, as at present existing, for preventing affrays, and for punishing persons who may clearly meditate a breach of the peace, and take measures to that end, but who, through the intervention of the police or from other causes, may not be able to accomplish their design.

2. From the tenor of Clause 1, Section 2, Regulation IV. 1825, I am inclined to think that assembling armed men, or taking other unlawful measures, with the evident intention of committing a breach of the peace, is, on conviction, an offence punishable by the magistrate with fine and imprisonment under the discretionary powers vested in him by Section 19, Regulation IX. 1807. If however, I am wrong on this point, I think the offence should be made punishable by law.

To the Commissioner of Circuit of 15th Division, dated 23d December, 1831.

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of your letter of the 8th instant, and its enclosure from the magistrate of the city of Dacca, relating to the state of the law as regards the punishment of persons meditating affrays or breaches of the peace; and in reply to inform you that the Court entirely coincide with the opinion expressed in the 2d paragraph of your letter, and to request that you will transmit copies thereof and of this letter to the magistrate for his information and guidance.

December 23d, 1831.

To the Judge of Zillah Mirzapore, dated 6th January, 1832.

No. 665.
1806
Reg. II. Sec. 5.

In reply to your letter of the 13th ultimo, I am directed by the Court of Sudder Dewanny Adawlut to inform you that as the provisions of Section 5, Regulation II. 1806, do not restrict the power of attachment to property within the district, the Court are of opinion that the judge may cause the defendant's property to be attached on his inability to give the requisite security, wherever the same may be situated.

January 6th, 1832.

Extract from a letter to the Judge of City Dacca, dated 6th January, 1832.

No. 666.
1800.
Reg I.
1825.
Reg VIII Sec. 29,
Cl. 3 to 14.

Para. 2, The Court observe that the appointment of the guardian having been confirmed by them, you should not have removed him, Moomtazoodeen being still in his non-age, without their sanction. They do not consider the reasons assigned by you

sufficient to warrant his removal, for though the possession of the estate, for the protection of which he was appointed, is in the hands of the opposite party, the claim of the minor thereto remains to be decided, and the continuance of the guardian may be necessary to bring forward, and prosecute a suit to recover possession in the civil court in a regular manner. The Court therefore annul that part of your order, and direct that the guardian be restored to his office.

January 6th, 1832.

Extract from a letter addressed to the Moorshedabad Provincial Court of Appeal, dated 13th January, 1832.

No. 667
1814
Reg XXIII Sec 9

Para. 2. In reply, I am directed to state that the Court entirely concur in the view taken of the subject by you, and that the neglect of the moonsiff being one continued act, the judge was not competent to fine him in a larger sum than twenty rupees.

3. With reference to the 6th paragraph of the judge's letter of the 19th November last, the Court are of opinion that in cases of repeated or continued neglect and disobedience, if the judge consider a fine of twenty rupees inadequate to the offence, he is at liberty, under the provisions of Section 9, Regulation XXIII. 1814, to suspend him from office, and report his conduct for the orders of the superior authorities.

January 13th, 1832.

To the Judge of the City of Moorshedabad, dated 13th January, 1832.

No 668.
1814
Reg XXVI Sec 14, Cl 4 to 7
1832
Reg VII Sec 5.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 31st ultimo, requesting instructions on certain points connected with the operation of Regulation V. 1831, and to communicate to you the following replies.

2. Question 1st.—The sudder ameens are to be guided, in regard to tulubana by the rules in force for the guidance of the zillah and city judges previously to the enactment of Regulation V. 1831.

3. Question 2d.—The periodical civil reports are to be forwarded to this Court by the zillah and city judges.

4. Question 3d.*—On the subject of this question the Court direct me to inform you that you should apply to the civil auditor or direct to Government.

1831
Reg V Sec 27

5. Question 4th.—In suits instituted before a zillah or city judge, whether decided by him before or after the promulgation of Regulation V. 1831, the appeal lies to the Sudder Dewanny Adawlut, supposing of course that it has not been preferred to the provincial court of appeal before the promulgation of the regulation in question.

January 13th, 1832.

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* 3d Question.—In contingent extraordinary disbursements, what is the extent of the authority of a district judge without previous reference? At present the charges not included on the fixed establishment are countersigned by the court of appeal.

To the Acting Judge of Purnea, dated 13th January, 1832.

No. 669.
1819
Reg II Sec 30

In reply to your letter of the 30th ultimo, I am directed by the Court of Sudder Dewanny Adawlut to inform you that suits in which lands held exempt from assessment from the subject of dispute, but in which the validity of the tenure is not contested, are not referrible to the collector under the provisions of Section 30, Regulation II. of 1819.

January 13th, 1832.

From Joint Magistrate of Bugoora, dated 29th December, 1831.

No. 670.
1817.
Reg XVII. Sec 6, Cl. 4.

With reference to the extract, forwarded to me by the commissioner of this division, from the Court's proceedings under date the 15th ultimo, I beg to state that my impression of the meaning of the clause referred to by the Court was, that it only indicated the law as regarded the prosecution of the adulteress by her husband. With submission I beg to observe that no mention, or allusion, however slight, is made in Clause 4, Section 6, Regulation XVII. 1817, as to the course to be adopted by the husband towards the adulterer, and I submit that, considering the wording of the clause, I cannot be held to have acted in direct opposition to the law as it is promulgated.

2. I take the opportunity to solicit instructions from the Court, regarding the crime of rape: whether I am at liberty to commit the perpetrator, if no complaint be preferred, the person on whom the crime has been committed or her relations, through fear, not prosecuting. I await the orders of the Court previous to investigating a case which has been brought to my notice, wherein the injured person is prevented by threats from prosecuting.

To the Joint Magistrate of Bugoora, dated 13th January, 1832.

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of your letter of the 29th ultimo, stating, with reference to the Court's proceedings of the 15th November last, on the trial of the prisoner Noaz Mundul, the construction put by you on Clause 4, Section 6, Regulation XVII. 1817, and soliciting the Court's instructions regarding the commitment of the perpetrators of rape, when no complaints have been preferred against them for that offence.

2. The Court are of opinion that although the wording of Clause 4, Section 6, Regulation XVII. of 1817, does not specifically restrict the magistrate in cases of adultery from proceeding against the adulterer, when the husband of the adulteress does not come forward to prosecute, yet that by the spirit of the enactment the restriction is equally applicable to such cases.

3. The Court further direct me to observe that there is nothing in the regulations which prohibits a magistrate from taking cognizance of cases of rape in which no complaint is preferred, but that he should exercise this power with the utmost discretion and with due regard to the feelings of the injured party and her family. (See Construction No. 403, page 168, vol. I., dated 24th August, 1825.)

January 13th, 1832.

672—675.

20 Jan
17 Feb } 1832

No. 672.
1806.
Reg. XVII.

The Court on the 20th January, 1832, recorded their opinion that the proprietors of estates are not entitled to the benefit of Regulation XVII. 1806, in cases of *Bye bil wuffa* in which the period specified for redemption expired prior to the promulgation of the said regulation.

January 20th, 1832.

Extract from a letter addressed to the Moorshedabad Provincial Court of Appeal, dated 27th January, 1832.

No. 673.
1831
Reg V Sec. 27, Cl. 1.

Para. 2. The Court are of opinion that your construction of Clause 1, Section 27, Regulation V. 1831, viz. "that all suits instituted in the Zillah and City Courts previous "to the 1st January, 1832, will be appealable to the Provincial Courts at whatever period "they may be decided," is erroneous, and that all appeals from the decisions of a zillah or city judge, which shall not have been preferred to the Provincial Court prior to the date fixed by the Governor General in Council, for the commencement of the operation of the regulation in question, lie to the Sudder Dewanny Adawlut, at whatever time the original suit may have been instituted.

January 27th, 1832.

Resolution of the Nizamut Adawlut under date the 27th January, 1832.

No. 674.
1831
Reg IX Sec. 4, Cl 2.

On the trial for *murder* the law officer of the Circuit Court acquitted the prisoner. The commissioner dissenting referred the trial to the Nizamut Adawlut with his opinion that the prisoner was guilty of *affray with homicide*. The law officer of the Nizamut Adawlut also acquitted, but the judge who revised the trial deemed the prisoner convicted of *manslaughter*. The Court were of opinion that the judge was competent to dispose of the case without calling in another judge.

January 27th, 1832.

Extract from a Resolution of the Court of Sudder Dewanny Adawlut, under date the 17th February, 1832.

No. 675.
1831
Reg IX Sec 2, Cl 2.
1817
Reg. XIX. Sec 8.

Para. 1. With reference to the provisions of Section 2, Regulation IX. 1831, the following rules of practice are agreed to by the Court.

Para. 3. The Court are of opinion that if the decision of the lower court be confirmed without the attendance of the opposite party, the appellant is not entitled to receive back any proportion of the value of the stamp paper on which his petition of appeal is written; and that the appellant's vakeel is entitled to the whole of the fee deposited by the appellant.

4. If the attendance of the opposite party shall not be required, and the said party shall, nevertheless, file an answer to the petition of appeal through a vakeel of the Court, the fee of the said vakeel shall be payable by the opposite party himself.

5. If an injunction be issued for a revision of the decision, the Court are of opinion, that in conformity to the rule prescribed in Section VIII. Regulation XIX. 1817, the stamp duty paid by the appellant on his petition of appeal should be returned to him, and the fees of the vakeel of the appellant and respondent (if attending) limited to a sum not exceeding one-fourth of the established fee.

February 17, 1832.

To the Judge of Zillah Mymensing, dated 24th February, 1832.

No. 676.
1831.
Reg. V. Sec. 16.

The Court of Sudder Dewanny Adawlut having had before them your monthly Reports for January, 1832, forwarded with your letter of the 11th instant, observe that appeals from the decisions of moonsiffs appear to have been referred to and disposed of in the month of January by Moolvee Jelalooddeen your principal sudder ameen, and by Sumboonath sudder ameen, and that in your statement of suits recalled from the registers and sudder ameens whose offices have been abolished, you state that you have referred them to the above mentioned officers as having been instituted previous to the 1st of January, 1832. By Clause 2, Section 16, Regulation V. 1831, the judge cannot, after the period fixed for the operation of the regulation, refer appeals to the sudder ameens, nor can he, without special authority from this Court, which has not been obtained by you, refer appeals to the principal sudder ameens. Under these circumstances, the decisions and orders passed by the above mentioned officers on appeals referred to them subsequent to the 1st January, 1832, the date of the promulgation of the regulation in your district, are not valid. The Court therefore desire that you will recal from their files all such appeals as are at present pending before them, and that, replacing on the file those disposed of by them since the date of the promulgation of the regulation, you will dispose of them yourself.

February 24, 1832.

To the Judge of Zillah Backergunge, dated 24th February, 1832.

No. 677.
1831.
Reg. VIII Sec 20.
1822.
Reg VII. Sec. 23, Cl. 3.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 11th instant, requesting the Court's opinion whether the decrees of a collector passed under Regulation VIII. 1831, are to be enforced by the judge or by the collector; and in reply to refer you to Section 20 of that regulation, by which the rules for the execution of awards prescribed in Clause 3, Section 23, Regulation VII. of 1822, are declared applicable to awards made by collectors under the first mentioned regulation.

February 24, 1832.

To the Commissioner of Circuit for the 14th Division, dated 24th February, 1832.

No. 678.
1834.
Reg. XI. Secs. 2 & 3.

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of your letter of the 10th instant and its enclosure, and in reply to communicate to you the

Court's opinion that the deputation charges of assistants to the magistrates, authorized by Section 3, Regulation XI. 1824, if not paid by the parties, should be realized by the same process as costs of suit in civil cases; and that a commissioner of circuit is competent to exercise the same power as the magistrate under that regulation, in ordering the deputation of an assistant duly qualified, (that is vested with special powers,) and to adjudge the payment of his deputation charges.

February 24, 1832.

From the Commissioner of Circuit for the Division of Bundelcund to the Register of the Nizamut Adawlut, Western Provinces, dated 24th February, 1832.

No. 079.

1817 Reg. XX. Sec. 23. 1829 Reg X. Sch. B. Art 1.

I have the honor to submit for the consideration and orders of the Nizamut Adawlut, copy of a letter dated the 24th December, from the magistrate of Banda.

2. It appears to me that the major may be considered to include the minor, that is, if a moochulka on plain paper is valid under the regulations when taken from witnesses to compel their attendance before the Court of Circuit, it would be no less valid in the lower Courts. With reference however to the 4th paragraph of the magistrate's letter, I solicit the sentiments of the Court.

From the Magistrate of Banda to the Commissioner of Circuit, 7th Division, dated 24th December, 1832.

I have the honor to submit for your consideration the following observations relative to the execution of moochulkas, the present mode of procedure regarding which appears to me of doubtful legality.

2. By Article 1 of Schedule B. in Regulation X. 1829, moochulkas of all descriptions with the exception of those taken from prisoners on their release from the criminal gaol are required to be written on stampt paper; subsequently, (in the shape of an erratum,) the exemption from duty was extended to moochulkas taken from witnesses required to attend the Court of Circuit.

3. But with respect to the moochulkas which it is the common practice for magistrates to take from parties in cases before them, to secure their attendance during the investigation, no exemption is granted by the regulation above specified, consequently all such moochulkas should be written on stampt paper. The same observation applies to the moochulkas taken from prosecutors and witnesses by the police darogahs under the provisions of Regulation XX. 1817, for which likewise no exemption is specified.

4. The execution of such recognizances as those above adverted to, being therefore illegal, it admits of question how far the amount of a recognizance so executed may be recoverable from individuals, in the event of the same being forfeited. At the same time, it must be allowed, that the imposition of a tax of this nature on individuals, except when the recognizance entered into may be of the nature of bail bonds, or personal security for appearance, would be a great hardship, and have the effect of inducing all parties to

combine in concealing crime, and I conceive therefore that I have only to bring the omission to the notice of the higher authorities to ensure the extension of the exemption to the cases above specified.

From the Register of the Sudder Dewanny Adawlut, Western Provinces, to the Register of the Presidency Sudder Nizamut Adawlut, dated 7th March, 1832.

I am directed by the Court of Nizamut Adawlut for the Western Provinces to forward to you the enclosed copies of letters received from the commissioner of Bundelkund to be laid before the Sudder Court of the Presidency. The Court are of opinion that under the terms of the exemption contained in Schedule B, viz. "Mochulkas and recognizances taken from prosecutors and witnesses to secure attendance at criminal trials," the moochulkas in question may be taken upon plain paper. Should the Sudder Court of the Presidency coincide in the view of the case, the commissioner will be directed to observe this construction of the regulation.

The Presidency Court, on the 18th May, 1832, concurred in the above construction.

7th March, 1832.

From the Judges of the Bareilly Provincial Court of Appeal to the Register of the Sudder Dewanny Adawlut, Western Provinces, dated 10th February, 1832.

No. 680.
1831.
Reg V. Sec. 27, Cl. 2.

We request you will submit the accompanying letter to the Court of Sudder Dewanny Adawlut.

2. We are of opinion this letter will put the Court sufficiently in possession of the matter upon which we have to intreat the orders of the Court, whether it is for us, under the regulations of 1831, to undertake the investigation of the charges tendered by Mr. Oldfield, and examine the papers and proceedings recently and formerly forwarded to us from Cawnpoor; or, whether all letters, papers and proceedings belonging to the accusations against the pundit should not be forwarded to the Superior Court.

3. The earliest letter received here from the Civil Court of Cawnpoor upon this subject and intimating the suspension of the pundit, is dated the 18th March last, and reached us on the 23d of the same. Persian proceedings reached us on the 2d April, and more were promised. On the 26th December, we received and sanctioned Mr. Oldfield's nomination of a person to officiate in the office of the pundit sudder ameen, and the letter now forwarded was not received with Persian missils till the 9th ultimo. No part of the case or cases involving the pundit sudder ameen of Cawnpoor, has in fact ever been in consequence taken up by this court, and we cannot but doubt whether the pundit's cases are to be considered pending before this court in the manner contemplated by Clause 2, Section 27, Regulation V. 1831, zillah Cawnpoor being clearly comprehended within the first Clause of that Section.

From the Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 7th March, 1832.

I am directed by the Court of Sudder Dewanny Adawlut for the Western Provinces to transmit the enclosed copies of correspondence relative to the oppression and misconduct of the pundit sudder ameen of the Court of Zillah Cawnpore to be laid before the Sudder Court of the Presidency. It will be observed that the case in question has been entertained for a very considerable time by the Court of Appeal and various orders have been passed on it: this Court is therefore of opinion that it is a case clearly falling within the intention of the rule contained in Clause 2, Section 27, Regulation V. 1831, and "should be disposed of by the Provincial Court in the same manner as would have "been the case if the provisions of that Regulation had not been extended to Zillah "Cawnpore."

As the case in question involves the construction to be put upon a Regulation agreeably to the general orders of Government, it is forwarded to be laid before the Presidency Sudder Adawlut previous to the issue of the order.

The Presidency Court, on the 30th March, 1832, concurred in this construction.

March 7th, 1832.

Extract paragraph 3 from a letter addressed to the Judge of Zillah Burdwan, dated the 7th March, 1832, in reply to his letter of the 20th February, 1832.

Para. 3. With reference to the concluding paragraph of your letter I am directed to inform you that judges of the Zillah and City Courts to which Regulation V. of 1831 has been extended should, after the period fixed for its operation, perform all the duties, with regard to the submission of appeals, &c. to this Court, heretofore performed by the Provincial Courts.

No. 681.
1831
Reg V Sec. 27, Cl 1.

March 9th, 1832.

To the Judge of City Dacca, dated 16th March, 1832.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your return of the 18th February to the Court's precept of 19th January last, and its enclosures, on the subject of the appointment of certain officers to manage the accounts of the estate of the certain wards of your Court.

No. 682.
1800
Reg I
1805
Reg VIII Sec 29, Cl 8 to 14

2. The Court observing that the Regulations in force do not authorize the entertainment of the establishment in question, and being of opinion that it is unnecessary, deem it proper to annul your order of the 11th June last.

March 16th, 1832.

Resolution of the Court of Sudder Dewanny Adawlut at Calcutta, dated 16th March, 1832.

No. 683.
1825.
Reg II. Sec 3.

Two judges of the Sudder confirm the decree of a Provincial Court. The *same* two judges admit a review—*one* of them leaves the Court; the *other* confirms the decision previously passed by the two. Under those circumstances the Court resolved that the second decision of the *remaining judge* is final, and that a second concurring voice is not necessary to render it so.

March 16th, 1832.

From the Commissioner of Circuit for the 19th Division to the Register of the Presidency Court of Nizamut Adawlut, dated 3d March, 1832.

No. 684.
1818
Reg XII.

I request you will obtain for my guidance the orders of the Court of Nizamut Adawlut on the enclosed case.

2. One Kashee Nund was convicted by the magistrate of Zillah Midnapore of having, under the assumed name of Gunganarrun Rai, fraudulently passed an unfinished and unsigned note of the India Bank, purporting to be for one hundred rupees, and having thereby fraudulently obtained possession of cloths valuing rupees one hundred the property of Jowahir Mir. On the 6th June, 1831, the magistrate passed sentence on the prisoner to receive thirty rattans and to be imprisoned for two years and kept to hard labour.

3. The prisoner having appealed to the officiating commissioner, his case was called for on the 18th July, and on the 5th October the officiating commissioner confirms the sentence, but directs that security be demanded from the prisoner, and that on his failing to give it, the case be brought before the commissioner before the sessions. Subsequently Regulation VII. 1831 being enacted, the officiating commissioner sends the case to me.

4. My opinion is that the magistrate could not pass such a sentence for such an offence, which does not come under the provisions of Regulation XII. 1818; therefore that his order should have been rescinded, and that he should be directed to commit the prisoner for trial by the circuit judge. But it exceeds my power to order this after this confirmation by the officiating commissioner of the magistrate's proceedings; and yet the case has to come up before me with a view to carrying into effect the officiating commissioner's order respecting security: for the duties of the 8th and 9th Sections of Regulation VIII. 1818, do not appear to have been transferred to the sessions judges under Regulation VII. 1831.

To the Commissioner of Circuit for the 19th Division, dated 16th March, 1832.

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of your letter of the 3d instant and its enclosures, and to inform you that under the circumstances stated in your letter the Court are of opinion that the sentence passed by the magistrate of Midnapore on the 16th June, 1831, on Kasheenath Nund, and the order of the late officiating commissioner dated the 5th October last confirming it and directing that security

should be required from the prisoner are illegal. They accordingly are pleased to annul the same, and direct that the prisoner be committed for trial before the sessions judge.

March 16th, 1832.

Extract of a letter from the Session Judge of Zillah Sarun to the Register of the Nizamut Adawlut, dated 23d March, 1832.

No. 685.

1823. Reg IV Sec. 6. 1831. Reg. VII. Sec 15, C. 2.

Para. 2. Although Jeorackun Pasban, the prisoner in this case, was not actually committed by me in my capacity of magistrate of this district, he is, in a proceeding held by me, declared to be guilty of the offence with which he is charged, and on the grounds stated in that proceeding, I committed either three or four persons, at different times. Four I know have been tried, of whom two have been found guilty, and two acquitted. I therefore have postponed the present trial, reporting the above circumstance for orders of the Nizamut Adawlut; for as no evidence beyond identifying the prisoner as the person mentioned in my proceeding was taken by the magistrate who committed him, I should hardly feel myself justified in presiding at his trial. It is true, the strict letter of Section 6, Regulation IV. of 1823, may not be considered as precluding me, but as I apprehend that my doing so would be acting contrary to the spirit and intent of that enactment, I consider it the safest course to refer the case to the Court of Nizamut Adawlut for orders.

To the Session Judge of Zillah Sarun, dated 13th April, 1832.

I am directed by the Court to acknowledge the receipt of your letter of the 23d ultimo, and to inform you that the Court are of opinion, under the circumstances stated, that the trial of Jeorackun Pasban should be held by the commissioner of circuit on his return to the station of the district.

April 13th, 1832.

To the Session Judge of Sarun, dated 27th April, 1832.

No. 686.

1807. Reg IX. Sec. 20.

I am directed by the Court to acknowledge the receipt of your letter of the 20th ultimo and its several enclosures.

2. The Court observe that the assistant to a magistrate is not competent to make commitments to the Court of Circuit, unless he may have been appointed by Government to act as magistrate. consequently an assistant directed by the commissioner to take charge of the office at the sudder station during the absence of the magistrate in the interior cannot exercise that power. Under these circumstances therefore the Court deeming the commitment by the assistant of the prisoner Torrur Pasban on a charge of burglary and theft illegal, annul it, and direct that the proceedings be returned to the magistrate, in order that the latter may dispose of the case by commitment or otherwise as he may deem proper under the Regulations.

3. With reference to the question in the 5th paragraph of your letter, the Court observe, that the present case is analogous, as far as relates to the share taken by you in

the preliminary investigations, to that of Jeorackun, on which their opinion was communicated to you by my letter of the 13th instant. In the event therefore of the prisoner Torrur being recommitted by the magistrate, the Court are of opinion that the case should be tried by the commissioner, to whom a copy of this letter will be communicated for his information.

April 27th, 1832.

From the Judge of Zillah Backergunge to the Register to the Sudder Dewanny Adawlut, dated 27th March, 1832.

No. 687.

1814 Reg. XXVI Sec. 6, Cl. 2, and Sec 7. 1829 Reg. X Sch. B. Art 8, Par 4.

During the investigation of suits in the civil court of this district I have observed that in former years it was a practice for people (suitors) in suing for such property as talook or ousut talook, or hawallah or ousut hawallah, to lay the amount of the suit at three times the jumma that these mofusil estates paid to the zemindar, but I believe that the amount of suit for the above kind of property should be reckoned by the produce of one year's assets from them, and not according to the revenue paid by them to the zemindars in whose estates the minor ones may be comprehended.

2. If the party suing had gone agreeably to the regulations, and laid the amount at the assets of one year, and had found, or it had been considered by me, that he had underrated them, in that case I suppose I have the power agreeably to Clause 8, Section 6, Regulation XXVI. 1814, to order a supplementary pleading to be filed to rectify what was wanting in the first; but in the instance I allude to in the former part of this letter, there is a total departure from the Regulation, and therefore I request to know whether in such cases supplementary pleadings are permitted. A man might be mistaken in regard to the annual assets of an estate; they may be more or less than he may have laid them at; but where the Regulation is plain, and he departs from it, is it left to my option to nonsuit, or not? The Court's opinion will oblige me; as I observe a number of appealed cases in this predicament, to nonsuit which in this late stage of the proceedings would prove of considerable detriment to the parties, as entailing on them increased law expences; and therefore I wish the instruction of the Court as to the mode of proceeding to be adopted.

To the Judge of Zillah Bachergunge, dated 27th April, 1832.

In reply to your letter of the 27th ultimo, I am directed by the Court to refer you to the provisions of Section 7, Regulation XXVI. of 1814, as applicable to such suits of the description noticed by you as may have been instituted prior to the promulgation of Regulation X. 1829; and to observe that the rules contained in the 4th paragraph of the note on Article 8, Schedule B, of the last quoted Regulation, are applicable to those instituted subsequently to its promulgation.

April 27th, 1832.

At a Court of Sudder Dewanny Adawlut for the Western Provinces, held on the 27th April, 1832.

No. 688.
1831
Reg V Sec 28,
Reg. IX Sec. 2, Cl. 2.

Resolved, that the powers vested in the Court of Sudder Dewanny Adawlut by Clause 2, Section 2, Regulation IX. 1831, on the receipt of a petition of appeal from the decision of an inferior Court can be exercised in those cases only in which an appeal is within the cognizance of the Court under the general regulations, and that consequently the Court cannot interfere on the receipt of petitions of appeal against the decision of a zillah or city judge passed by the latter in appeal from the decision of sudder ameens and moonsiffs: the decision of the zillah or city judge being in such cases declared final by Section 28, Regulation V. 1831.

The Court are further of opinion that the same construction applies to cases in which the decision of the zillah or city judge has been passed prior to the operation of Regulation V. 1831, in the district in which the cause of action originated as well as to those passed subsequently.

The Presidency Court, on the 18th May, 1832, concurred in this construction.

April 27th, 1832.

From the Commissioner of the 2d Division to the Register of the Nizamut Adawlut Western Provinces, dated 18th April, 1832.

No. 689.
1824.
Reg XV.
1831.
Reg V. Sec. 18, Cl. 6.

I have the honor, with reference to the 2d paragraph of your letter of the 20th ultimo, to submit a copy of a letter from the acting magistrate of Agra, explaining his reasons for employing the sudder ameens in the investigation of cases under Regulation XV. 1824, and to solicit the orders of the Court as to the authority of the magistrate on this point. The advantage of adopting Mr. Mansell's construction appears to me obvious, and I trust the Court will deem it legal.

From the Acting Magistrate of Agra to the Commissioner of the 2d Division, dated 12th April, 1832.

In reply to your letter of the 9th instant, calling for an explanation of the reference of certain cases under Regulation XV. 1824, to the sudder ameens of this Court, I beg to state for the information of the Nizamut Adawlut, that the cases in question were sent by me simply for investigation under the spirit of Clause 6, Section 18, Regulation V. 1831.

2. I hope that I may not have been deemed by the Nizamut Adawlut to have given too great a latitude to the spirit of the Clause. Should the letter of it in their view exclude all cases of dispossession, the magistrate will, I cannot but feel, be deprived of every legal power of associating his own honest superintendence with native ability and knowledge in sifting out the real merits of this the most difficult class of cases within the jurisdiction of the Criminal Court; at a time too when Government have been pleased to

authorize the inferior office of tuhseeldar being vested with the power of adjusting and reporting upon cases more important still to the community, summary suits of rent.

From the Register of the Nizamut Adawlut for the Western Provinces to the Register of the Presidency Court of Sudder Dewanny and Nizamut Adawlut, dated 27th April, 1832.

I am directed by the Court of Nizamut Adawlut for the Western Provinces to forward to you the enclosed copies of letters received from the commissioner of the 2d division and the magistrate of zillah Agra; from which has arisen a discussion of the legality of a reference to a sudder ameen for investigation of cases under Regulation XV. 1824, involving disputes for possession.

The Court are of opinion that under Clause 6, Section 18, Regulation V. 1831, which is adduced by the magistrate as his authority for making the reference, he is not empowered to adopt this course in the disposal of such cases; that Section being intended to refer to cases of a strictly criminal nature.

The Presidency Court, on the 18th May, 1832, concurred in this construction.

April 27th, 1832.

From the Judge of Zillah Rajshahye, dated 18th April, 1832.

No. 690.
C O 11th Sept 1829

On the 9th February, 1820, a decree was passed in this Court for the sum of rupees 7,444-10-6, awarding both principal and interest, besides costs of suit: but the amount of the decree was not realized until the month of March, 1832. The pleader of the plaintiff has now moved this Court to cause payment of interest to be made on the principal for the period intervening between the day of decision and the date of execution of the decree, and he founds his motion on the circular order of the Sudder Dewanny Adawlut dated the 11th September, 1829, (No. 10 of volume 2, Circular Order, Sudder Dewanny Adawlut), but as a question has arisen in my mind whether the order of the superior tribunal was intended to have a retrospective effect with respect to any decree, like the present for instance, which remained unexecuted subsequently to the promulgation of that order, I do myself the honor of soliciting the opinion of the judges on the point in doubt.

To the Judge of Zillah Rajshahye, dated 4th May, 1832.

In reply to your letter of the 18th ultimo I am directed by the Court to inform you that in the case stated by you, if the delay in the realization of the amount of the decree was not owing to the default of the decree holder, he is entitled to interest on the amount adjudged to him from the date of the decree until the said amount was paid into Court.

May 4th, 1832.

From the Civil and Session Judge of Etawa to the Register of the Sudder Dewanny Adawlut Western Provinces, dated 3d May, 1832.

No. 691.

1823 Reg. IV Sec 6. 1831 Reg VII Sec. 18, Cl 2. 1817 Reg XVIII. Sec 7

By Clause 2, Section 13, Regulation VII. 1831, a session judge cannot try a case committed by himself in his capacity of magistrate, but it is not mentioned whether he can try cases committed in his capacity of civil judge, I therefore request you will solicit the opinion of the Court on this point.

You will also oblige me by ascertaining whether a civil judge can commit for trial a native officer on the charge of embezzling or making use of the public money ; or whether he must refer the case for investigation and eventual commitment to the magistrate.

From the Register of Western Provinces to the Judge of Zillah Mynpooree, dated 11th May, 1832.

I am directed by the Court of Nizamut Adawlut for the Western Provinces to acknowledge the receipt of your letter of the 3d instant.

2. In reply, I am desired to state that in the opinion of the Court a sessions judge is not competent to try a person committed for trial by himself in his capacity of civil judge.

3. The Court also direct me to inform you that although a summary enquiry into cases of embezzlement by ministerial native officers may be conducted by the judge under the provisions of Section 7, Regulation XVIII. 1817, that officer is by no enactment empowered to commit for trial before the commissioner of circuit for the offence : this duty being left to the magistrate, to whom the judge should transmit his proceedings, if grounds appear to exist for subjecting the accused to a criminal trial : the magistrate however in committing or releasing the person charged with the offence will act on his own judgment on a fair consideration of the evidence adduced.

The Presidency Court, on the 1st June, 1832, concurred in this construction.

May 11th, 1832.

To the Judge of Zillah Tirhoot, dated 18th May, 1832.

No. 692.

1831. Reg V Secs. 5, 15, and 18.

In reply to your letter of the 30th ultimo, I am directed by the Court to inform you that sudder ameens and moonsiffs are not prohibited from trying suits in which other sudder ameens and moonsiffs or their dependants may be concerned.

May 18th, 1832.

To the Acting Secretary to the Sudder Board of Revenue, dated 18th May, 1832.

No. 693.

I am directed by the Court to acknowledge the receipt of your letter of the 1st instant and its enclosures, requesting that the Calcutta Provincial Court of Appeal may be instructed to forward to the Board certain original proceedings.

2. In reply, I am directed to inform you that the Court considering the reasons assigned by the Provincial Court for not sending their records out of their office satisfactory, do not think that any interference on their part can properly be afforded.

3. With reference however to the remark, that the Sudder Board have invariably directed their record keeper to attend at this Court, or the Provincial Court, with such papers as the Court might wish to inspect, the Court willingly acknowledge the assistance they have at all times received from the board on such occasions. At the same time they cannot admit the analogy between the case of a court of justice calling for the records of a public office, with a view to a just decision between the parties in suits pending before them, and that of a Board requiring the original records of a court of justice to be sent to it for the purpose mentioned in your letter (of preparing pleadings of appeal on the part of Government.)*

May 18th, 1832.

From the Magistrate of Zillah Purneah to the Register of the Calcutta Court of Nizamut Adawlut, dated 4th May, 1832.

No. 694.
1822
Reg VIII Sec 3, Cl 1.
1824
Reg XV.

I have the honor to request the permission of the Court of Nizamut Adawlut to try the above case under the provisions of Regulation XV. of 1824.

2. The case involves not only a boundary dispute between two landed proprietors, but there is also a doubt in which district, Purneah or Bhaugulpore, the lands are situated. The plaintiff states the former, the defendant the latter, and should the Bhaugulpore zemindar's statement prove to be correct, the proceedings held by me will be useless unless the sanction of the Court be first obtained to this application.

3. I am not aware of any Regulation applicable to the present case; but as the Court can, under Regulation VIII. of 1822, direct the trial of prisoners to be held in any district they think proper; perhaps it will not be considered in any way irregular, or illegal to extend their sanction to the request above made.

To the Magistrate of Zillah Purneah, dated 18th May, 1832.

I am directed by the Court to acknowledge the receipt of your letter of the 4th instant, and in reply to inform you, that provided the case of Shah Ahmud Reza versus Deonarain Singh, is one to which the provisions of Regulation XV. 1824 are applicable, the Court are of opinion that you should proceed in the investigation, in the course of which, should it appear that the lands are situated in zillah Bhaugulpore, you will refer the parties to the magistrate of that district, and certify to that officer the proceedings held by you in the case.

May 18th, 1832.

To the Dacca Provincial Court of Appeal, dated 25th May, 1832.

No. 695.
1819
Reg VIII Secs 9 16, and Cl 4, Sec 18.

I am directed by the Court to acknowledge the receipt of your letter of the 15th March last, and its enclosure, requesting to be informed whether a judge or register is

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* See Circular Order of the Sudder Dewanny Adawlut, dated 28th December, 1832, No 75, Vol 2.

competent to sell talooks under the provisions of Clause 4, Section 18, Regulation VIII. 1819, in satisfaction of summary decrees for balance of rent.

2. In reply, I am directed by the Court to observe that all talooks, in which the interest of the occupant is saleable, may be sold for an arrear of rent accruing thereon, and that the sale should be made by the register, or in his absence by the judge or magistrate *(now by the collector under Section 16, Regulation VII. 1832)* in the same manner as putnee and durputnee talooks, under the provisions of Sections 9 and 16 of Regulation VIII. 1819.

The Western Court, on the 4th May, 1832, concurred in this construction.

May 25th, 1832.

To the Judge of Zillah Burdwan, dated 25th May, 1832.

No. 696. 1831. Reg V. Sec. 5, Cl. 3.

With reference to the 2d paragraph of your letter of the 20th March last, and to your letter of the 2d instant, I am directed to observe that the question for consideration appears to be, whether a ryot sued for rent in a moonsiff's court can remove the suit to the collector's court, merely by affirming that the land for which the rent is demanded is not liable to rent. The Court are of opinion that he cannot. The point at issue is, not the validity of the alleged rent free tenure, but the fact of the ryot's having paid, or not paid rent for the year previous to that for which the suit is instituted. The moonsiff is competent to try and determine this point; and if it be proved by the village accounts duly authenticated, or other legal evidence, that the ryot did pay rent for the preceding year, to pass a decree for such amount of rent as may appear to be due, leaving the royt to establish his right to hold the land as lakeraj by a suit instituted under Section 30, Regulation II. 1819.

The Western Court, on the 6th July, 1832, concurred in this construction.

May 25th, 1832.

To the Commissioner of Circuit for the 15th Division, dated 1st June, 1832.

No. 697. 1821. Reg. III. Sec. 5, Cl. 1.

In reply to your letter of the 18th ultimo, requesting the Court's opinion as to the propriety of admitting an appeal from the order of a magistrate after the expiration of the prescribed period, I am directed to refer you to the first Clause of Section 5, Regulation III. 1821, which authorizes the admission of an appeal from a magistrate's order after the expiration of one month from the date of it, if it be proved that the petitioner was prevented, by circumstances totally beyond his control, from presenting his petition within the prescribed period.

June 1st, 1832.

To the Commissioner of Circuit for the 15th Division, dated 8th June, 1832.

No. 698. 1793 Reg IV Sec. 8. 1803. Reg III. Sec. 7 Extended to Criminal Courts by Cl. 1, Sec. 2 Reg L. 1806.

In reply to your letter of the 24th ultimo, I am directed to inform you that the Court concur with you that the attachment by a magistrate of the lands of a non-attending witness, upon whom a subpœna has not been served, is illegal.

June 8th, 1832.

To the Dacca Provincial Court of Appeal.

No. 699.
1793. Reg. V Sec. 18. 1803. Reg IV. Sec. 13.

The Court having had before them your certificate of the 31st ultimo and its enclosures requesting to be informed, with reference to the orders passed by the Court in the case of Khutee Jan Bebee appellant versus Unwur Khan and others respondents, whether the translations of Bengallee papers into Persian in certain other cases are to be made at the expence of the appellants, or of Government; direct me to inform you that the translation in the case in question were made at the cost of the appellant at her special request; but that in the other cases alluded to they should be made by the mohurrirs of the Court, or by hired mohurrirs at the cost of Government if the regular establishment is insufficient to perform the duty with due despatch.

2. I am at the same time directed to refer you to the circular order of the 11th July, 1809, which directs that only those papers which are material to the issue of the case shall be translated.

June 29th, 1832.

From the Register of the Sudder Dewanny and Nizamut Adawlut at Calcutta to the Register of the Court for the Western Provinces, dated 6th July, 1832.

No. 700.
1831 Reg. VI.

I am directed by the Court to acknowledge the receipt of your letter of the 24th March last, and to inform you that the Court entirely concur with the judges of the Western Court, that they are authorized to receive an act upon periodical reports and other matters having reference to periods prior to the 1st January, 1832, which, on that date, were not before this Court. It has indeed been the practice of this Court to take up all matters which were pending before them on the 1st January last, and to return those subsequently received for submission to the Western Court.

July 6th, 1832.

To the Judge of Zillah Burdwan, dated 6th July, 1832.

No. 701.
1831. Reg. V.

I am directed by the Court to acknowledge the receipt of your letter of the 20th ultimo, requesting their opinion on certain points connected with Regulation V. 1831, and to communicate to you the following replies.

2. As Regulation V. 1831 does not authorize any alteration in the rules in force before its enactment, in regard to the issue of the processes of moonsiffs, their processes should be issued according to those rules. (See subsequent rules in Section 5, Regulation VII. 1832.)

3. When a defendant in a suit pending before one moonsiff resides in the division of another, the Court are of opinion that it would be sufficient to have the process backed by the moonsiff in whose division the defendant resides.

1814. Reg XXIII. Secs. 23, 31 and 42.

4. In cases of resistance of the process of a moonsiff, the Court are of opinion that he should report the case for the orders of the judge, as required in the instances provided for by Sections 23, 31 and 42 of Regulation XXIII. 1814.

5. In cases of execution of moonsiff's decrees, in which the defendant might reside, or the property to be attached, in execution be situated, in the division of a different moonsiff from the one who passed the decree, the judge would, of course, refer the execution to the former.

6. The Court consider the rules contained in Section 11 of the Regulation in question to authorize the employment of moonsiffs in giving possession, in execution of their own decrees, of all property not being land paying revenue to Government, but are of opinion that under Section 51, Regulation XXIII. 1814, they are still competent, with the authority of the judge, to give possession of lands paying revenue to Government in execution of any decrees which may not have been passed by the moonsiffs themselves. (See subsequent rules in Section 7, Regulation VII. 1832.)

7. The rules contained in Section 29, Regulation XXIII. 1814, seem to provide sufficiently for the service of processes by pauper, as well as by other plaintiffs.

8. In the event of a vacancy in the office of moonsiff, the recommendation of the successor should be made under paragraph 8 of the resolutions of Government dated 1st November, 1831, through the commissioner of revenue and circuit of the division.

9. All applications for the erection and repair of moonsiffs' cutcherries and other similar contingencies should be made direct to Government.

The Western Court, on the 17th August and 26th October, 1832, *concurred in these constructions.*

July 6th, 1832.

From the Judge of Zillah Burdwan, dated 20th June, 1832.

No. 702.
1829
Reg X Sch B. Art. 8.

In the note to Article 8 of Schedule B, in Regulation X. 1829, it is provided, that in suits for houses, and other things of value, real or personal, not being for land paying revenue to Government, forming an entire mehaul or specific portion of it with a defined jumma, nor rent free land, the amount is to be computed at the estimated selling price. Supposing, then, an ijarehdar to sue for possession of a certain quantity of land, being neither rent free, nor an entire mehaul paying revenue to Government, nor a specific portion of one with a defined jumma; ijarehs not being saleable, how is the plaintiff to compute the value of the land for which he sues?

2. In case also of a ryot taking a pottah of a few beegahs of lakheraj land, and suing the proprietor of the land for possession of the same, how is the amount of the suit to be fixed; a tenure of this nature not being transferable, and therefore having no market price?

3 In many districts the right of a khoodkasht ryot of mál land is not considered transferable, and cannot be sold: under which circumstances, supposing the ryot to institute a regular suit for possession against the proprietor of the land, how is he to estimate the value of his right?

4. In the case of putnee talooks the price in general may be fixed without much difficulty; but it seems hard that a talookdar of this description should be obliged to sue at a greater expence than the proprietor of an estate paying revenue, direct to Government.

To the Judge of Zillah Burdwan, dated 6th July, 1832.

I am directed by the Court to acknowledge the receipt of your letter of the 20th ultimo, regarding the construction of Section 8 of Schedule B, Regulation X. of 1829.

2. In reply, I am directed to observe that though the land included in an ijareh, or in the jote of a cultivating ryot, is not transferable by sale, the interest of the party claiming the ijareh or jote is capable of being valued; and that in the cases supposed by you, the plaintiff should be allowed to lay his suit at the amount which he may consider the value of his interest in the thing claimed; to which if the defendant make objection, the Court would decide thereon after making the summary enquiry directed by Section 4, Regulation XIII. of 1808.

The Western Court, on the 27th July, 1832, concurred in this construction.

July 6th, 1832.

From the Acting Magistrate of Furruckabad to the Register of the Nizamut Adawlut Western Provinces, dated 29th May, 1832.

No. 703.
1809. Reg. V
1813 Reg. VIII
1829. Reg. VIII.

I have the honor to enclose a copy of a letter addressed by me to the Secretary to the Governor General Judicial Department, by whom I was directed to refer the matter for the consideration and orders of the Court of Nizamut Adawlut in the Western Provinces. I request the favor of receiving the orders of the Court on the case in question.

From the Acting Magistrate of Furruckabad to the Secretary to the Governor General of India, Judicial Department, dated 15th May, 1832.

By direction of the officiating commissioner of the Furruckabad or 3d division, I have the honor to request the orders of the Right Honorable the Governor General in the following case.

2. A noted dukyt who had made his escape, Lekwa by name, from the jail of this zillah, was apprehended by some of our police some time back, in the Lucknow territory. With him, at the time of his apprehension were several others, who assisted him in resisting the police; and some of the latter were wounded. Of Lekwa's companions some escaped, one was killed, and one Shibloll, or Sheololl, was taken. It is proposed to commit him for trial, but some doubts having arisen as to whether Sheololl comes under the definition of native subject as specified by 1813, Regulation VIII., Section 2, Class second, by reason of his having quitted our territory and resided in that of Lucknow for the last eight or nine years, it is thought proper to make a previous reference.

From the Register of the Western Provinces to the Register of the Presidency Court, dated 8th June, 1832.

I am directed by the Court of Nizamut Adawlut for the Western Provinces to transmit, for the consideration of the Presidency Court, the enclosed copy of a letter received from the magistrate of Furruckabad under date the 29th ultimo, with its enclosures.

2. The Court are of opinion that the prisoner Sheololl is a native subject of the British Government under Class No. 2, Regulation VIII. 1813, and as such liable under

the provisions of Regulation VIII. 1829, to be tried by the Honorable Company's Courts for the offence of assisting Lekwa in resisting the police in the territories subject to the King of Oude.

3. Previous to issuing orders the Court will await the reply of the Presidency Court.

To the Register of the Nizamut Adawlut, Western Provinces, dated 6th July. 1832.

I am directed by the Court to acknowledge the receipt of your letter of the 8th ultimo, and its enclosures, and in reply to inform you that the Court, concluding Sheeloll to have been born in Seharunpore, concur with the Western Court in considering him a native subject of the second class described in Regulation VIII. 1813.

July 6th, 1832.

To the Session Judge of Zillah Cuttack, dated 13th July, 1832.

No. 704.

1801
Reg III.
C. O. N A. 5th Dec. 1829.

I am directed by the Court to acknowledge the receipt of your letter of the 29th ultimo, the proceedings on the commitment of Modhoo Sahoo and others, for forgery; and in reply to inform you that the Court have been pleased to annul the commitment of the prisoners, on the ground that in the case in question the magistrate had no authority to originate a prosecution for forgery. It belonging to the Civil Court, before whom the forged document was produced (or, in the present instance, to the civil judge on a representation from the moonsiff,) to make the requisite enquiry, and commit the persons implicated in the transaction, if sufficient ground appeared for such a measure.

July 13th, 1832.

To the Judge of Zillah Mymensingh, dated 20th July, 1832.

No. 705.

1793.
Reg III Secs. 7 & 10.
1803
Reg. II. Secs. 9 & 20

I am directed by the Court to acknowledge the receipt of your letter of the 4th instant, and of the Persian proceedings that accompanied it, which are herewith returned.

2. In reply to your first question the Court are of opinion that there can be no objection to a judge pointing out officially to a party in a suit the proper mode to be followed by him when he sees occasion to do so. This answer renders a reply to your second question unnecessary.

3. Presuming from the third question that you ask whether the judge, on the application of A, a plaintiff, can summarily direct the collector to proceed in the sale of the estate of B, the defendant, against whom C had in the interim collusively obtained a decree for the same estate; the Court are of opinion that he cannot; but that should the decree in favor of C be proved in a regular suit instituted by A against B and C to be collusive, the estate of B will be liable to sale in satisfaction of A's decree.

July 20th, 1832.

From the Judge of Zillah Etawah to the Register of the Western Provinces, dated 26th May, 1832.

No. 706.

1831
Reg. V Sec. 6, Cl. 4 1829
Reg X. Sch B. Art.8. 1788
Reg. III Sec. 13. 1803
Reg. II. Sec. 19.

I request you will ascertain from the Court of Sudder Dewanny Adawlut at Allahabad whether persons preferring claims to property sued for under the provisions of Clause 4, Section 6, Regulation V. 1831, are to present their petitions on plain or stamped paper? and if the latter, is the amount to be agreeable to the rates specified in the Schedule B, referred to in Section 17, Regulation X. 1829?

2. Also whether the rules for the guidance of moonsiffs in the above Clause relative to cases of succession to real property, are applicable to causes in the courts of zillah judges and sudder ameens? Section 19, Regulation II. 1803, (corresponding with Section 13, Regulation III. 1793,) does not make it incumbent on the Courts to issue a notification for the attendance of claimants, although I observe, from the select causes decided by the Sudder Dewanny Adawlut at Fort William, that this mode of proceeding in several instances has been adopted by that authority.

Proposed letter from the Register of Western Provinces to the Judge of Zillah Mynpooree, dated 8th June, 1832.

I am directed by the Court of Sudder Dewanny Adawlut for the Western Provinces to acknowledge the receipt of your letter of the 26th ultimo, containing two queries relative to the construction to be put on Clause 4, Section 6, Regulation V. 1831.

2. In reply to your 1st paragraph, I am directed to inform you that the claimants of property under the provisions of the Clause above cited, should present their petitions on stamped paper, the amount of which will be regulated by the rules contained in Schedule B, Regulation X. 1829; no other rules relative to amount of stamps being now in existence.

3. In reply to your 2d paragraph the Court remark that the rules contained in the same Clause, regarding cases of succession to real property, are intended exclusively for the guidance of moonsiffs, such being the express tenor of the enactment; the course to be pursued in such cases by zillah and city courts remaining precisely as it stood previous to the enactment of Regulation V. 1831.

To the Register of the Sudder Dewanny Adawlut, Western Provinces, dated 20th July, 1832.

I am directed by the Court to acknowledge the receipt of your letter of the 8th ultimo, and its enclosures, relating to two questions on the construction of Clause 4, Section 6, Regulation V. 1831.

2. In reply, I am directed to inform you that the Court concur in the reply proposed to be given to the second question. On the subject of the first, they are of opinion that a petition, putting in a claim to a share of the property sued for in consequence of a notice issued under Clause 4, Section 6, Regulation V. 1831, should be considered as an application "in relation to matters pending" before the Court, and that, with reference to the

omission of the moonsiffs in Article 7, Schedule B, Regulation X. 1829, and to the provisions of Clause 2, Section 9, Regulation V. 1831, such application in the Courts of the moonsiffs should not be written on stamp paper.

The Western Court, on reconsideration of the subject, concurred on the 17th August, 1832, in this construction.

July 20th, 1832.

To the Register of the Sudder Dewanny Adawlut, Western Provinces, dated 27th July, 1832.

No. 707.

1793 Reg XXXIX. 1803 Reg XLVI.

I am directed by the Court to acknowledge the receipt of your letter of the 8th ultimo, requesting to be furnished with copies of any orders regarding the legality of the appointment of deputies to assist the city and pergunnah kazees, or determining the extent to which the assistance of deputies, if legally appointed, is available.

2. In reply, I am directed to transmit to you the accompanying copies of a letter from the acting judge of zillah Shahabad dated 10th December, 1817, requesting to be informed if the duty of kazee can be performed by proxy; of the Court's reply, under date 2d April, 1818, forwarding copy and translation of a futwa of the law officers of the Court, in which it is stated that a kazee cannot, without the express permission of the hakim or ruling power, legally appoint a deputy; and of a letter addressed to the judge of Shahabad on the 6th April, 1824, in the 3d paragraph of which a "deputy kazee" is stated to be "an officer not acknowledged or mentioned throughout the Regulation quoted," (Regulation XXXIX. 1793.)

July 27th, 1832.

From the Commissioner of Circuit 5th Division to the Register of the Western Provinces, dated 18th July, 1832.

No. 708.

1832. Reg II Sec. 2, Cl. 2.

I have the honor to forward for the consideration and orders of the Court of Nizamut Adawlut a copy of a letter to my address from the magistrate of Bareilly, together with a copy of my reply thereto, on the subject of an order issued by him to the thanadars for taking the declarations of individuals preferring of themselves at the thanah charges of burglary and theft.

2. As I have nothing to offer in addition to what I have stated in my letter to the magistrate, I await the orders of the Nizamut Adawlut on the present reference.

From the Magistrate of Zillah Bareilly to the Commissioner of Circuit of the 5th Division, dated 12th July, 1832.

In Regulation II. of 1832, it is prescribed that thanadars shall not proceed or send officers to make enquiries into an alleged theft or burglary case, unless the plaintiff present a petition on plain paper complaining of the theft or burglary.

2. Some cases have already come before me wherein a complaint was made to the thanadar of such theft and burglary, and the thanadars refused to interfere, and perhaps

without clearly informing the plaintiff that he should write a petition; for the enactment having greatly abridged the productive powers of the police officers, it seems natural to suppose that they would endeavour to shew up the law as an injurious one.

3. As the intent of the law clearly is to prevent police officers creating cases of this nature for their own benefit, and to prevent individuals from falsely charging others without coming forward themselves, and not to throw difficulties in the way of persons really suffering who wish to bring forward their cases, I have directed the thanadars to take the evidence of all persons coming forward *themselves*, and to proceed to investigate the case. So many of the population are unable to read and write that the limitation of enquiry to cases in which a written petition may be delivered is, I think, beyond the intent of the law, which was only to put a stop to the abuses that were largely practised.

From the Commissioner of Circuit of the 5th Division to the Magistrate of Bareilly, dated 17th July, 1832.

In reply to your letter of the 12th instant, informing me of the order issued by you to the thanadars in your jurisdiction instructing them to take the declarations of persons stating themselves to have suffered from an act of burglary and theft committed on their own property, I beg to observe that the proceedings adopted by you, being an amendment of the rules laid down for the guidance of the police in Clause 2, Section 2, Regulation II. 1832, I doubt of its propriety as being a deviation from the strict letter of the law, and which it is only competent to the superior tribunal to sanction.

2. From the imperfect state of information in which the greater proportion of the public may be supposed to be as to the intention of the Regulation in question, I am inclined to think the order issued by you to the thanadars in your jurisdiction would be otherwise unobjectionable, but as the object of the Regulation becomes more generally known and understood, the enforcing the applications as required to be made to the thanadars on unstamped paper would, I conceive, be attended with little or no inconvenience to the public.

From the Register of Western Court of Nizamut Adawlut to the Register of the Presidency Court, dated 27th July, 1832.

I am directed by the Court of Nizamut Adawlut for the Western Provinces to transmit for the perusal of the Presidency Court the annexed copy of a letter with enclosures received from the commissioner of circuit 5th division under date 18th instant.

2. Under the terms of Clause 2, Section 2, Regulation II. 1832, the Court apprehend that no charges of burglary or theft unattended with personal violence, can be received or acted upon by the officers of police, unless the individual injured, however poor or illiterate he may be, present a written petition; and it is also expressly required by the above law that this petition shall contain not only a statement of the fact, but also a specific request either that search may be made for the stolen property, or that the offenders be apprehended and brought to punishment. It cannot be doubted that the expense of getting the petition written will prevent many of the poorer classes from preferring

charges, and that the delay attending it as well as the necessity of the sufferer presenting it himself will operate powerfully towards encreasing the difficulty already experienced in the apprehension of known offenders.

2. As the law however stands the Court are of opinion that the commissioner rightly interpreted it in his letter to the magistrate of Bareilly under date the 17th instant, and that the latter officer exceeded the limit therein laid down in his directions to his thanadars.

The Calcutta Court, on the 24th August, 1832, concurred in this construction.

July 27th, 1832.

To the Judge of Zillah Shahabad, dated 27th July, 1832.

No. 709.
1798.
Reg. II Sec. 18. 1803
Reg. V Sec 10, Cl 7. C. O 8 D. A 18th May, 1832.

In reply to your letter of the 9th instant, requesting to be informed whether, with reference to the Court's circular of the 18th May, 1832, (No. 47, volume 2, Sudder Dewanny Adawlut Circulars), the security required in cases of appeal under Section 10, Regulation II. 1798, is to be taken and its validity ascertained without orders from the Court, I am directed to inform you that the Court are of opinion that the security need not be demanded until the appellate Court have determined to call upon the respondent to file an answer to the petition of appeal.

July 27th, 1832.

From the Register of the Western Provinces, dated 10th August, 1832.

No. 710.
1829.
Reg X. Sch B Art. 1.

I am directed by the Court of Nizamut Adawlut for the Western Provinces to acknowledge the receipt of your letter of the 2d instant, with its enclosures on the subject of security bonds taken by police officers under the Regulations.

2. In reply, I am directed to inform you that the Court are of opinion, that such documents should be drawn out on unstamped paper.

The Calcutta Court, on the 14th September, 1832, *concurred in this construction.*

August 10th, 1832.

From the Judge of Zillah Goruckpore, dated 15th August, 1832.

No. 711.
1831
Reg. IX. Sec. 7

I request you will have the goodness to ascertain for me the opinion of the Court of Sudder Dewanny Adawlut Western Provinces, whether the provisions of Section 7, Regulation IX. 1831, extend to the zillah courts; or whether the Regulation, as stated in the title, (the preamble leaves it doubtful), has reference to the Courts of Sudder Dewanny and Nizamut Adawlut only.

To the Judge of Zillah Goruckpore, dated 24th August, 1832.

I am directed by the Court of Sudder Dewanny Adawlut for the Western Provinces to acknowledge the receipt of your letter of the 15th instant, regarding the construction of Section 7, Regulation IX. 1831.

2. In reply, I am desired to inform you that the provisions of that Section are general, and have reference to the zillah and city courts as well as to the Court of Sudder Dewanny Adawlut.

The Calcutta Court, on the 21st September, 1832, concurred in this construction.

August 24th, 1832.

Extract from a Letter of the Magistrate of Zillah Bareilly, under date the 9th August, 1832, to the Commissioner of Circuit 5th Division, submitted with that Officer's Letter, dated the 14th August, 1832.

No. 712.

1816 Reg XIV. Sec. 1.

I have the honor to acknowledge the receipt of your letter of this date, and to inform you that I considered Section 9, Regulation XIV. 1816, to sanction the punishment of labour with imprisonment of burkundazes guilty of gross neglect of duty; whether rightly or not, I do not know, for the express order for it is not contained in the Section in question; but as the corporal punishment of rattans is allowed, I conclude the other as matter of course is.

3. It is only just now that I have found that Regulation VIII. 1803, prescribes (among a mass of other miscellaneous matter) in Section 23, that guards in charge of convicts who may have escaped, if it appear that they were guilty of any connivance, should be committed to the Court of Circuit, that they may receive the punishment which the law directs; what punishment this is I cannot find.

4. This Regulation, being printed in the edition of the Regulations published at the Baptist Press under the head Nizamut Adawlut, escaped my notice in my former enquiries on this subject.

7. On the latter head I find that the Regulation has previously been here understood in the same light I have done as sanctioning labour with the imprisonment. I find (December, 1824,) Hosein Khan burkundaz for conniving at the escape of Abdoolwahib under investigation, sentenced by Mr. Dick, the magistrate, to four months' imprisonment with hard labour and irons. I cannot immediately quote other cases, but am told that the practice was usual.

Extract of a Letter from the Register of the Western Provinces to the Register of the Presidency Court, dated 24th August, 1832.

The Court are of opinion that the magistrate is not authorized under Regulation XIV. 1816, or any other enactment, to sentence to hard labour a burkundaz found guilty merely of neglect of duty.

The Calcutta Court, on the 21st September, 1832, concurred in this construction.

August 24th, 1832.

To the Commissioner of Revenue for the 10*th Division, dated* 24*th August,* 1832.

No. 713.

1819 Reg. VI. 1831 Reg. VIII.

I am directed by the Court to acknowledge the receipt of your letter of the 8th instant, requesting the Court's opinion whether a summary suit brought by the farmer of a ferry against the kutkeénadar for rent, is cognizable by a collector under Regulation VIII. 1831.

2. In reply, I am directed to communicate to you the opinion of the Court, that a person holding the farm of a public ferry under Regulation VI. 1819, is not authorized to underlet it without the sanction of the magistrate; and that the provisions of Regulation VIII. 1831, do not apply to arrears of rent in such cases, the mode of proceeding in which is expressly provided for by Section 10, Regulation VI. 1819.*

August 24*th,* 1832.

To the Judge of Zillah Beerbhoom, dated 31*st August,* 1832.

No. 714.

1831. Reg. V Reg. VIII Secs. 8 and 11.

I am directed by the Court to acknowledge the receipt of your letter of the 13th instant, submitting certain queries connected with the demand and exaction of rent, &c. as affected by Regulations V. and VIII. 1831.

2. In reply to your first and second questions I am directed to inform you, that the cases therein alluded to, if connected with arrears or exaction of rent, are cognizable as summary suits by the collector under the provisions of Regulation VIII. 1831, and (except where summarily tried by the collector,) as regular suits by the moonsiffs on stamp paper of a quarter the full value, if within the amount cognizable by those officers, under Sections 8 and 11 of that Regulation.

3. In reply to your third question the Court direct me to state that they consider the above rules applicable both to ryots and under-tenants resisting undue demands, and to zumeendars and others claiming their just dues.

1814 Reg. XXIII Secs. 52 and 54

4. On the fourth question the Court observe that the moonsiff or other competent officer, called upon to sell property attached for rent, is entitled to be reimbursed the expenses actually and necessarily incurred by him, though no sale should take place; and that in the event of such expenses not being paid, he is authorized to realize them by the sale of such part of the attached property as may be necessary for the purpose.

The Western Court, on the 5*th October,* 1832, *concurred in this construction.*

August 31*st,* 1832.

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* The *Western Court, on the* 28*th September,* 1832, concurred in this construction, in so far as that disputes regarding the rent of public ferries, are cognizable only by the magistrate, but observed that the Regulation cited does not appear to contemplate the underletting of public ferries, either with or without the magistrate's sanction.

Extract of a Letter from the Judge of Zillah Mympooree, under date the 15th ultimo.

No. 715.

1790. Reg. XIII. Sec 8. 1803. Reg. IV. Sec. 35.

Para. 2. I also request you will ascertain whether the Court see any objection to my awarding to plaintiffs interest on costs, when they are not discharged by the defendants within a reasonable time.

Extract of a Letter from the Register of the Western Provinces to the Register of the Presidency Court, dated the 7th September, 1832.

Para. 2. The Court are of opinion that when the costs of suit are included in the decree, they become part of the matter awarded by the Court passing the decree, and as such are liable with other property so adjudged, to interest from the date of the Court's decision.

The Calcutta Court, on the 5th October, 1832, *concurred in this construction.*

September 7th, 1832.

To the Judge of Zillah Tirhoot, dated 21st September, 1832.

No. 716.

1793. Reg III Sec. 21. 1803. Reg. II. Sec. 17.

I am directed by the Court to acknowledge the receipt of your letter of the 8th instant, requesting their opinion as to the power of civil courts in regard to bankruptcy, and to inform you in reply that as the Regulations do not contain any specific provisions on the subject, you should exercise the discretion vested in you by Section 21, Regulation III. 1793, in any case that may come before you, leaving the party dissatisfied with your orders to appeal therefrom to this Court.

September 21st, 1832.

To the Judge of Zillah Midnapore, dated 21st September, 1832.

No. 717.

1812 Reg. V. Sec. 26.

I am directed by the Court to acknowledge the receipt of your letter of the 8th instant, and in reply to inform you that you are competent, under the provisions of Section 26, Regulation V. 1812, to attach the whole (but not a portion of a joint undivided estate) on sufficient cause being shewn; but that your decision as to the sufficiency of the cause is open to appeal.

September 21st, 1832.

To the Deputy Secretary to Government in the Judicial Department, dated 21st September, 1832.

No. 718.

An application having been made to the Court by Mr. R. Smith, reporter on the part of the Hurkaru newspaper, for copies of the minutes of the judges on the question of trial by jury in the Mofussil Courts (submitted to Government on the 20th of November, 1829), I am directed to ascertain whether there be any objection to a compliance with the request, and to beg the favor of your obtaining and communicating to the Court the pleasure of the Honorable the Vice President in Council on the subject.

2. I am desired to add that minutes of the judges furnished on requisition from Government, similar to that now adverted to, are not considered by the Court as public documents; and that consequently they do not deem themselves authorized to grant copies of them without such reference as they now take the liberty of making.

From the Officiating Secretary to Government to the Register of the Presidency Court of Sudder Dewanny and Nizamut Adawlut, dated 23d October, 1832.

I am directed to acknowledge the receipt of your letter dated the 21st ultimo, and in reply to request you will inform the Courts that the Honorable the Vice President in Council entirely concurs in their opinion that documents of the nature of those referred to in your letter should not be considered as public. Copies of them should not therefore be granted to private individuals on their application.

September 21st, 1832.

To the Judge of Zillah Midnapore, dated 21st September, 1832.

No 719
1831
Reg V Sec. 5 Cl 3

I am directed by the Court to acknowledge the receipt of your letter of the 10th instant, and in reply to inform you, that the Court are of opinion that the word "property" in Clause 3, Section 5, Regulation V. 1831, means the "proprietory right" in, and not the "rent" of land exempt from the payment of revenue; and that suits for the rent of such lands are cognizable by moonsiffs, where that point alone is in question.

The Western Court, on the 26th October, 1832, *concurred in this construction.*

September 21st, 1832.

To the Judge of Mynpooree, dated 21st September, 1832.

No 720
1800
Reg I
1805
Reg VIII Sec 20
Cl 8 to 14

I am directed by the Court of Sudder Dewanny Adawlut for the Western Provinces to acknowledge the receipt of your letter of the 27th ultimo, correcting an error noticed in your former letter of the 26th July.

2. In reply to your reference I am directed to state that the civil courts are not expected to call on guardians appointed by them under Regulation VIII. 1805, to deliver up their accounts for their inspection; nor are those courts competent to exercise any active interference in the management of the property belonging to the ward. On the receipt however of credible information against the character of the guardian, showing him to the Court's satisfaction to be unfit for the situation, the Court is competent to make enquiry into the matter and to take measures for his removal.

3. For the recovery of any monies or property, which on investigation the guardian may appear to have embezzled, the civil court is not empowered to interfere excepting on the institution of a regular suit.

The Calcutta Court, on the 28th December, 1832, *concurred in this construction.*

September 21st, 1832.

From the Judge of City Moorshedabad, dated 18th September, 1832.

No 721
1793
Reg III Sec 17
1803
Reg II ber 12
1806
Reg II Sec 2
53 Geo III
Cap 155 Sec 113

I request the instructions of the Sudder Dewanny Adawlut on the following questions.

Case.—A person sues A, B and C, natives of Bengal, in the court of the zillah judge within whose jurisdiction in Bengal the cause of action arose. A and B are resident within the limits of the jurisdiction of the district court in which the action is brought. C is resident within the town of Calcutta, having no agent of any kind

Question 1st. Is such suit against A, B and C cognizable by the zillah court?

Question 2nd. If it is cognizable by the zillah court, through what channel, and in what mode is the notice prescribed by Section 2, Clause 3, Regulation II. 1806, to be served on C, to call on him to defend the cause? and, in the event of inability to serve the notice, how is the proclamation to be made which is prescribed for such cases?

2. I am induced to put the first of these two questions on a consideration of a reply from the register of the Sudder Dewanny Adawlut, dated 18th July, 1828, to a question put by Mr. D. Dale, judge of this court, in a letter to the register of the Sudder Dewanny Adawlut, dated 7th July, 1828, as to the method of putting the provisions of Section 7, Regulation IX. 1819, in practice; and because a petition of plaint has been presented to me in court in which a defendant is in the situation of C in the supposed case.

3. If a suit be cognizable in the zillah, I presume that the court having cognizance of the suit must have some known legal method of executing the process, which by the laws it is required to issue in pursuing the enquiry, though for such cases I can find no rule in the regulations. I never met with a cause before involving the questions now put, but the frequent occurrence of such a case is by no means improbable, and if it is cognizable by the zillah courts, as included in those noticed in Clause 3, Section 2, Regulation II. of 1806, some well defined rules of practice seem so necessary to prevent unpleasant collision with other authorities, that I imagine some rules must exist though I am unfortunately ignorant of them. Section 113 of 53 of Geo. III. Cap. 155 would I suppose be sufficient to meet any case where arrest in Calcutta may be necessary, but does not apply either to the execution of notices, summons, proclamation or subpœna.

To the Judge of City Moorshedabad, dated 5th October, 1832.

I am directed by the Court to acknowledge the receipt of your letter of the 18th ultimo, submitting two questions for the orders of the Sudder Dewanny Adawlut.

2. In reply to the first I am directed to state that the suit therein referred to is cognizable by the zillah court.

3. In reply to the second, that the notice or proclamation should be forwarded through a peon to the register of this court, who will cause it to be served by the nazir of the court, in conjunction with the peon by whom it is delivered. The inability of the court to issue process in the town of Calcutta, noticed in the Court's letter of the 18th July, 1828, to a former judge of your court, extends only to compulsory process,

(as arrest of the person, realization of money decreed, &c.) and not to process issued for the information of the party, which it is the practice of the court to issue. The zillah judge should decide the case ex-parte, if the defendant do not appear, and in the event of a decree being passed against him, should execute it on any property belonging to him which may be found beyond the limits of the town of Calcutta, and if ignorance of the institution of the suit should then be pleaded by the defendant, a review of the judgment might, on proof of the plea, be granted.

The Western Court, on the 9th November, 1832, *concurred in this construction.*

October 5th, 1832.

To the Register of the Nizamut Adawlut for the Western Provinces, dated 12th October, 1832.

No. 722.
1807
Reg. IX. Sec. 21.

I am directed by the Court to acknowledge the receipt of your letter of the 2d August last, and its enclosures, requesting to be informed whether any construction has been adopted by the Presidency Court regarding the power of a magistrate to revise and modify the proceedings of his assistants without an appeal having been preferred therefrom.

2. In reply, I am directed to forward to you the accompanying copies of a letter from the Moorshedabad court of circuit, dated the 4th November, 1826, and of the Court's reply, dated the 10th of the same month, (see Construction, No. 437, of volume I.) and to refer to the Court's letter of the 29th November, 1822, quoted in the printed report of the case of Himmut and Hergopal (pages 224 and 225, volume II. Nizamut Reports); and to state the opinion of the Presidency Court, that a magistrate is authorized, under the general power vested in him by the regulations as a superintending authority over his assistant, to revise the proceedings of the latter without an appeal, in like manner as the provincial courts of circuit were, by the construction of the 10th November, 1826, declared competent to revise those of the magistrate.

October 12th, 1832.

From the Judge of Zillah Dacca, dated 14th September, 1832.

No. 723.
1814.
Reg XXVI. Sec. 3, Cl. 9 and 10.

I have the honor to submit for the consideration and final orders of the Superior Court the accompanying proceedings, and request their opinion as to whether a final order rejecting the petition on a summary appeal under Clauses 9 and 10, Section 3 of Regulation XXVI. 1814, a regular appeal can be afterwards instituted.

To the Dacca Provincial Court of Appeal, dated 19th October, 1832.

I am directed by the Court to acknowledge the receipt of your letter of the 14th ultimo and its enclosure, and in reply to inform you, that the rejection of a summary

19 / 26 } Oct. 1832.

appeal is not a bar to the admission of a regular appeal, provided the latter be otherwise admissible under the regulations in force.

October 19*th*, 1832.

** To the Commissioner of Circuit for the* 13*th Division, dated* 26*th October*, 1832.

No. 724. 1824 Reg XV.

I am directed by the Court to acknowledge the receipt of your letter of the 11th instant, requesting the opinion of the Court as to the competency of a magistrate to determine boundaries under Regulation XV. 1824.

2. In reply, I am directed to observe that paragraph 7 of the circular order of the 17th December, 1830, expressly authorizes the practice. Indeed a dispute regarding possession of land of which the extent is contested cannot be determined without fixing *pro tempore* the boundaries of it. The magistrate will of course merely define the boundary of that which was in the possession of the party ousted before the dispute arose, leaving the question of right to be determined by the civil court.

October 26*th*, 1832.

To the Commissioner of Circuit for the 19*th Division, dated* 26*th October*, 1832.

No. 725. 1793. Reg. IX. Sec 4. 1803 Reg. VI. Sec. 4

I am directed by the Court to acknowledge the receipt of your letter of the 16th instant and its enclosures, and in reply to inform you that the Court concur with you in opinion that the magistrate of Cuttack acted properly in refusing to interpose his authority to compel the delivery of a betrothed woman to the petitioner in the case alluded to.

October 26*th*, 1832.

Extract of a Letter from the Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny and Nizamut Adawlut, dated 21*st September*, 1832.

No. 726. Evidence of Lepers as witnesses in Courts of Justice.

Para. 2. Previous to passing order on the same the Court are desirous of learning whether any rule has already been issued by the Presidency Court with regard to the matter referred; viz., the propriety of taking the deposition of lepers on oath, the Court request that with the sanction of the Presidency Court you will state for their information whether the records of your office contain any such order.

To the Judge and Magistrate of Zillah Etawah, dated 24*th September*, 1830.

In reply to your letter of the 27th ultimo, I am directed by the Courts of Sudder Dewanny and Nizamut Adawlut to inform you that the fact of a witness being afflicted with leprosy does not bar the admission of his evidence in our courts of justice.

From the Register of the Presidency Court of Sudder Dewanny and Nizamut Adawlut to the Register of the Western Court, under date the 26*th October*, 1832.

I am directed by the Court to acknowledge the receipt of your letter of the 21st ultimo and its enclosures, from the commissioner of circuit of the 7th division, and in

reply to forward to you the accompanying copy of a letter addressed to the judge of Etawah on the 24th September, 1830, informing him that the fact of a witness being affected with leprosy does not bar the admission of his evidence in our courts of justice.

October 26th, 1832.

To the Register of the Nizamut Adawlut for the Western Provinces, dated 20th October, 1832.

No. 727.
1831
Reg. VII.
1817
Reg XX. Sec. 16, Cl. 17.

I am directed by the Court to acknowledge the receipt of your letter of the 5th instant in reply to mine of the 7th ultimo, relative to the power of a session judge to sanction rewards for meritorious services, and with reference to the concluding paragraph of your letter, to state that the Court are of opinion that a session judge should be considered as having the same powers, in regard to the distribution of the commission on the value of property recovered, as the judges of circuit possessed under the former system.

The Western Court, on the 7th December, 1832, *concurred in this construction.*

October 26th, 1832.

From the Commissioner of Circuit 15th Division to the Register of the Presidency Court of Sudder Nizamut Adawlut, dated 22d September, 1832.

No. 728.
1817
Reg. XX. Sec. 10, Cl. 4.

Several complaints have lately been made to me, on the part of petty landholders, as touching the hardship suffered in consequence of certain arrangements lately made by the magistrates of two of the districts of this division, for securing the transmission of police packets under Clause fourth, Section 10, Regulation XX. of 1817, in cases where new thanahs have been made, or limits of old ones changed.

2. The principle on which the magistrates have acted appears very fair; namely, the charge for dawk runners to be borne by the landed proprietors in the proportion of the Government jumma; but I am sorry to say, that such is the extreme poverty of the lesser zemindars here, owing to failure of crops, and difficulty in getting rents paid and in now paying the Government revenue, that this dawk tax is felt as a very heavy exaction.

3. I wish therefore to know whether it might not be proper to exempt the landholders paying a small revenue to Government, say up to 125 rupees, and that the mofussil dawk shall be maintained by the wealthier zemindars whose estates and assessments are larger.

To the Commissioner of Circuit for the 15th Division, dated 26th October, 1832.

I am directed by the Court to acknowledge the receipt of your letter of the 22d ultimo, recommending that landholders paying a small revenue to Government should be exempted from contributing to the expence of the establishment of dawk runners, and that it should be maintained by the wealthier zemindars; and to inform you that, under the existing Regulations, the Court have no authority to sanction the exemption recommended, but to observe that the magistrate, in enforcing the provisions of Regulation XX.

1817, which relate to the subject, should exercise his discretion according to the circumstances of each case, leaving the party dissatisfied to appeal to you.

October 26th, 1832.

To the Commissioner of Circuit for the 18th Division, dated 2d November, 1832.

No. 729.

I am directed by the Court to acknowledge the receipt of your letter of the 16th ultimo and its enclosures, requesting the Court's orders regarding eighteen roobukarees in decided and twelve in undecided cases, which Mr. Davidson was unable to sign previously to his departure from Jessore on sick certificate.

2. In reply, I am directed to request that you will instruct Mr. Mills, the acting magistrate, to sign the roobukarees, the orders of which are recorded in Mr. Davidson's English note book in his hand writing, certifying thereon that he has compared them with the note book: and that in the cases of which no note is recorded, he pass such order as may on inspection of the proceedings appear just and proper, leaving the party dissatisfied with it to appeal in the regular course.

November 2d, 1832.

To the Commissioner of Circuit for the 18th Division, dated 2d November, 1832.

No. 730.

1821 Reg. III Sec 5. Cl 1. 1807 Reg IX. Sec. 23.

I am directed by the Court to acknowledge the receipt of your letter of the 15th ultimo and its enclosures, referring at the request of the acting joint magistrate of Barraset, the following points:—*First.* Whether a commissioner of circuit can admit an appeal from a magistrate's order, when the petition of appeal has not been presented within the period of thirty days prescribed by Section 5, Regulation III. 1821. *Secondly.* Whether he can reverse the order of a magistrate, refusing to admit a person to answer to a charge by attorney, without calling for his proceedings and examining the reasons, for passing them.

2. In reply to the first question, I am directed to observe that under Section 5, Regulation III. 1821, a person dissatisfied with a magistrate's order is entitled to an appeal to the commissioner, notwithstanding one month may have elapsed from the date of it, if the petitioner was prevented by circumstances totally beyond his control from presenting his petition within the prescribed period, and that it is for you to judge whether that was the case in the present instance or not. I am further directed to observe that though the petitioner be considered to have lost his *right* of appeal by being unable to shew sufficient cause for his delay, a commissioner is competent, under the general powers vested in him, to revise the magistrate's sentence or order, and alter or annul it, if it was illegal.

3. In reply to the second question, I am directed to observe that as the Court in a letter addressed to the magistrate of Ghazeepore on the 12th December, 1828, (No. 480, volume 1,) ruled that a court of circuit might admit a prisoner to bail without calling

for the magistrate's proceedings; so, in this case, they are of opinion that a commissioner may order a magistrate to admit a party to appear and answer by attorney if he sees sufficient reason for so doing.

November 2d, 1832.

From the Commissioner of Circuit 6th Division to the Register of the Nizamut Adawlut Western Provinces, dated 29th October, 1832.

No. 731.

I have the honor to submit a letter from the magistrate of Allahabad relative to the construction of Section 12, Regulation XII. 1803.

1793. Reg XIII Sec 9 1803 Reg XII Sec. 12. 1806. Reg X. Sec. 10.

2. I presume that it will be sufficient to refer the magistrate to Clause 3, Section 11, Regulation XX. 1817, whereby thannadars and other subordinate police officers, i. e. jemadars, mohurrirs, and burkundauzes are declared compellable, either on a criminal prosecution or by a civil action, to refund the amount received, the demand of security from the complainant preferring such charges being of course a preliminary step, as prescribed by Clause 1, Section 12, Regulation XII. 1803.

From the Magistrate of Allahabad to the Commissioner of Circuit 6th Division, dated 20th October, 1832.

I have the honor to acknowledge the receipt of your letter of the 11th instant, desiring me to state my opinion relative to the question which has been submitted by the joint magistrate, viz. "If a complaint be made against a thannadar or other subordinate police "officer for an act of corruption or extortion, or attempt to extort, is it necessary after the "charge is attested to demand security from the complainant to prosecute the charge "without delay? or, to state the question briefly, do thannadars and other subordinate "police officers (*i. e.* jemadars, mohurrirs, and burkundauzes) come under the denomi-"nation of native officers attached to the courts, specified in Section 12, Regulation XII. "of 1803?"

2. On an attentive consideration of the enactment referred to, it appears to me that although the term "ministerial officers" employed in the commencement of Section 12, may be regarded, as more immediately applicable to the sudder omlah attached to a court, yet for obvious reasons it could scarcely have been designed to exclude the mofussil officers from the operation of the law. I am, therefore of opinion that complaints against any individual attached to the mofussil police, above the grade of burkundauze, ought to be dealt with in the manner prescribed by the Regulation in question.

From the Register of the Western Provinces to the Commissioner of Circuit 6th Division, dated 2d November, 1832.

In continuation of my letter of the 2d November last, and in reply to the question referred to the Court by the magistrate of Allahabad in his letters of the 22d September and 20th October last, I am directed to inform you that although thannadars, and other

subordinate police officers do not come strictly within the terms of Section 12, Regulation XII. 1803, (Section 9, Regulation XIII. 1793,) or Section 10, Regulation X. 1806, by which the former is modified, the Court are of opinion that the principle of Section 10, Regulation X. 1806, is applicable to charges of corruption or extortion preferred against police officers, and that a magistrate is perfectly competent, whenever he may see reason to suspect any such charge brought against his police officers to be false and unfounded, to call on the person preferring the charge to give security for his attendance until the final decision of the case.

The Calcutta Court, on the 30th November, 1832, concurred in this construction.

November 2d, 1832.

To the Session Judge of Zillah Sarun, dated 9th November, 1832.

No. 732. 1812. Reg XX Secs. 7 and 10.

I am directed by the Court to acknowledge the receipt of your letter of the 17th ultimo and its enclosures, and in reply to inform you that the Court are of opinion that under Section 10, Regulation XX. 1812, powers of attorney produced by persons attending on behalf of others to procure the registry of deeds should be entered in a separate book, as directed by Section 7 of the same Regulation.

The Western Court, on the 7th December, 1832, concurred in this construction.

November 9th, 1832.

Extract from a Letter addressed to the Session Judge of Mymensingh, dated 9th November, 1832, in his reply to his of the 8th October, 1832.

No. 733. 1812. Reg. XX. Sec. 19.

Para. 2. With reference to the doubt expressed in the 3rd paragraph of your letter to the magistrate, as to the propriety of the thannah mohurrirs taking down in writing a second examination of a prisoner, I am directed to observe that no Regulation prohibits the practice, and that the mohurrir would not have been justified in refusing to record any declaration or confession which the prisoner wished to make. You are requested to communicate this opinion to the magistrate.

November 9th, 1832.

To the Register of the Nizamut Adawlut Western Provinces, dated 9th November, 1832.

No. 734. C O 27th April 1810 1818. Reg. VIII. Sec 7 1825 Reg IV Sec. 3.

I am directed by the Court to acknowledge the receipt of your letter of the 31st August last, and its enclosures, requesting to be informed what was the intention of the Court in issuing the circular order of the 27th April 1810, No. 70 of volume I, circular order Nizamut Adawlut.)

In reply, I am directed to observe that the circular order in question appears to have been issued in consequence of an order contained in the accompanying sentence passed on the trial of Comla Dome and others for dacoity, and that no document is forthcoming from which the intention of the judges by whom it was ordered, as to the mode in which the penalty of the security bonds are to be enforced, can be discovered. The Presidency Court however are of opinion that the penalty should be enforced by the magistrate, according to the same rules and by the same process observed by the civil courts in enforcing payment of money adjudged to be due by a decree.

November 9th, 1832.

From the Judge of Zillah Moradabad, dated 31st October, 1832.

No. 735.
Assistants to Judges cannot be employed in investigating and deciding miscellaneous cases relating to execution of decree.

With reference to the letter of the deputy secretary to Government to the address of the commissioner under date the 28th August last, regarding the employment of assistants, I request you will do me the favor to ascertain from the judges of the Sudder Dewanny Adawlut whether in the opinion of the Court an assistant may with propriety be employed by a civil judge in investigating and deciding miscellaneous cases relating to the execution of decrees.

To the Judge of Zillah Moradabad, dated 9th November, 1832.

I am directed by the Court to inform you, in reply to your letter of the 31st October last, that assistants to judges cannot be employed in the investigation and decision of miscellaneous cases connected with the execution of decrees, the enactments cited in the orders of Government under date 28th August last, containing no authority for entrusting such duties to those officers.

The Calcutta Court, on the 7th December, 1832, *concurred in this construction.*

November 9th, 1832.

Extract of a Letter from the Magistrate of N. D. Moradabad to the Commissioner of Circuit of the 4th Division, under date the 25th September, 1832.

No. 736.
1831.
Reg. XI. Sec 8.

Para. 10. There is also another point which it occurs to me is not clearly established, viz. your competency to interfere in the appointment of thanadars. By Section 7, Regulation XVII. of 1816, it is distinctly laid down that magistrates shall not be required to report the appointment, suspension or removal of police officers to the court of circuit. It may be objected that Section 8, Regulation XI. 1831, modifies the above rule, but it seems doubtful whether one section only of a regulation, which is not in force in this district, was intended by Government to be considered as law before the other sections to which it has reference were put in force. I have to request that the point may be settled by a reference to the Nizamut Adawlut.

Extract of a Letter from the Register of the Western Provinces to the Register of the Calcutta Court, dated 9th November, 1832.

Para. 2. The Court are of opinion, with regard to the point referred, that the provisions of Section 8, Regulation XI. 1831, apply to the whole of the ceded and conquered provinces, and not only to those districts in which tehsildary establishments are maintained; the concluding clause of the preamble to that Regulation distinctly extending the modified rules for the removal of police officers to the ceded and conquered provinces in general.

The Calcutta Court, on the 7th December, 1832, concurred in this construction.

November 9th, 1832.

From one of the Judges of the Calcutta Court of Appeal to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 30th October, 1832.

No. 737.

1793 Reg XIII Sec 9 1801 Reg XII Sec 12.

Not concurring in opinion with Mr. C. R. Martin, that the case of Raj Kishore Pulharee versus Hurochunder Lahuoree should be referred immediately to the magistrate of the suburbs of Calcutta, I have to request that you will ascertain the sentiments of the superior court on the subject.

2. I am not satisfied that we are debarred from the cognizance of any charge whatever of delinquency brought against the officers of our court in their official ministration; but the accusation before us being one which imputes to the individual arraigned what I consider we are empowered to inquire into, under the provisions of Section 9, Regulation XIII. 1793, and under which we are required to entertain the complaint, and if, on completing the investigation, we deem him guilty of such corruption as may appear to call for more exemplary punishment than the court could subject him to, under Clause 8, Section 9, Regulation XIII. 1793, then I apprehend it will be necessary in furtherance of Regulation XVIII. 1817, to refer the case to the commissioner of circuit.

3. As three of the prosecutor's witnesses have not been examined, nor any return received from the judge of 24-purgunnahs, regarding the appearance or non-appearance of one of the above witnesses, it would be premature in me now to record my opinion as to the defendant's innocence or guilt. Nevertheless in fairness I may observe that in my opinion the prosecutor has heretofore failed to establish the charge of an interpolatory order regarding the institution of a suit *de novo* on a certain document filed in the case.

4. In conclusion I have to request that you will ascertain from the Court whether we are authorized and required to complete the investigation, or are we directly to refer the whole question to another and to what other authority.

To the Calcutta Provincial Court of Appeal, dated 16th November, 1832.

I am directed by the Court to acknowledge the receipt of a letter from Mr. Curtis of the 30th ultimo, and its enclosures.

2. In reply, I am directed to inform you that the Court are of opinion that, in the case alluded to, your Court should complete the summary enquiry which has been com-

menced. If the majority of the judges should be of opinion that the case is one which calls for exemplary punishment, you should direct the vakeel of Government to institute a criminal prosecution against the defendant in the court of the magistrate of the suburbs of Calcutta. But that, in the event of your not thinking it necessary to adopt this measure, it will be of course optional with the prosecutor either to do so himself, or to seek redress by instituting a suit against the defendant in the civil court.

November 16th, 1832.

From the Judges of the Benares Court of Appeal to the Register of the Western Provinces, dated 9th November, 1832.

No. 738.
1831.
Reg. VIII. Sec. 4.

We beg to transmit for the consideration and orders of the superior Court copies of a correspondence relative to the execution of decrees passed in summary suits.

From the Judge of Zillah Mirzapore to the Judges of the Benares Court of Appeal, dated 25th September, 1832.

1 have the honor to forward for your consideration a copy of a letter addressed to me by the collector of this district, with copies of Persian proceedings holden by me in the civil court; and I request to be favored with your opinions, as to the discretion vested in the judge, to stay the execution of a summary decree which has been passed by the collector.

2. Though I admit the full force of Mr. Lindsay's arguments, as far as it concerns the general construction to be put upon the provisions of regulations relating to summary suits, still I cannot help thinking that the Government intended to leave to the judge a discretionary power of stopping the execution of a summary decree, under particular circumstances.

3. Mr. Lindsay remarks that in "Section 4, Regulation VIII. 1831, it is stated "that the decision of the collector of land revenue shall be final, subject to a regular "suit: but it is nowhere stated or implied that the execution of decrees passed by "collectors shall be stayed in consequence of regular suits being filed." To this I will add, that it is nowhere prohibited to stay the execution of a summary decree on a regular suit being filed.

4. Some definitive rule appears to be requisite, in order to prevent collision, and I would respectfully suggest the expediency of your Court procuring the sentiments of the judges of the Sudder Dewanny Adawlut on the subject.

From the Collector of Mirzapore to the Judge of that District, dated 28th August, 1832.

Having lately received three roobucaries from your Court directing that the execution of decrees passed in summary suits under Regulations V. of 1800, V. of 1812, and VIII. of 1831, should be stayed in consequence of regular suits having been filed in the Dewanny Court,

I do not consider that I should be acting legally in meeting the requisition made by you. In Section 4, Regulation VIII. 1831, it is stated that the decision of the collector of land revenue shall be final, subject to a regular suit; but it is nowhere stated or implied that the execution of decrees passed by collectors shall be stayed in consequence of regular suits being filed. On the contrary Clause 20 of the same Regulation refers to Clause 23, Regulation VII. 1822, and points out the distinct manner in which awards made by collectors shall be executed.

2. Our opinion differing so widely as to the constructions to be given to the provisions of Regulation VIII. 1831, it occurs to me that much inconvenience may arise from the view you have taken of it, and perhaps you will agree with me that it will be desirable to refer the point to the Court of Sudder Dewanny.

From the Register of the Sudder Dewanny Adawlut Western Provinces to the Judges of the Provincial Court of Appeal at Benares, dated 16th November, 1832.

In reply to your letter of the 9th instant, I am directed by the Court of Sudder Dewanny Adawlut for the Western Provinces to inform you that in the opinion of the Court of a judge is not competent to stay the execution of a summary award passed by a collector, pending the trial of a regular suit instituted in the civil court, to set aside that award. No provision in the regulations in force appears to the Court to invest the judge with this power, and the whole object of the summary process would be evidently defeated, as observed by Mr. Lindsay, if the execution of the award were liable to be stayed until the final adjustment of a regular suit.

The Calcutta Court, on the 7th December, 1832, *concurred in this construction.*

November 16th, 1832.

From the Judge of the Calcutta Court of Appeal, dated 6th November, 1832.

No. 739.
1793.
Reg. III. Sec. 8. 1803
Reg II. Sec 3.

I shall be obliged by your laying the following case before the Superior Court, and to obtain for me their opinion as to the propriety or otherwise of my proceeding in it, or transferring it to the Dacca Provincial Court.

Case No. 50 of 1820, 2d June. Muha Raja Sheokissen Bahadoor and seven others, plaintiffs, *versus* Soobulchunder Dutt Moonshee and his securities, Kissenpershad Dutt, Bulram Dutt, and Radhanath Dutt, defendants.

Claim. Arrears on account of the jumma of 1231 and 1232, B. S. of the estate of pergunnah Gunga Mundul, zillah Tipperah, Rupees 46,607-8.

Plaint. The petition of plaint states that the above pergunnah was leased by the plaintiffs to Soobulchunder Dutt moonshee, on the security of Kissenpershad Dutt, Bulram Dutt, and Radhanath Dutt, for a term of four years, viz. from 1231 to 1234 B. S. for an annual jumma of rupees 1,14,969-6-17, of which 51,969-6-17, was to be paid by the lessee into the Government treasury, on account of the *surkaree jumma* and the remainder sum, or rupees 63,000, to the zumeendars, the plaintiffs. That in the first year of his

lease the former fell in balance rupees 2,086, including interest; and in the following year, rupees 44,521-8. Meanwhile the farmer died, and no one appeared either on his behalf, or that of his securities, to manage the estate. For both the sums, or rupees 46,607-8, the plaintiffs seek for redress against the defendants, his heirs and securities.

Defence. Ramdhund Dutt, one of the defendants, appeared, and in his answer to the plaint not only denies the claim as unfounded, but disputes the jurisdiction of the Calcutta Provincial Court, alleging that the pergunnah lies in the district of Tipperah belonging to the jurisdiction of the Dacca Provincial Court, where, agreeably to Section 8, Regulation III. 1793, the action ought to have been brought on.

2. It would appear that the estate, for the balance of the produce of which the present action is instituted, is actually situated in the district of Tipperah. The defendants however have no property in that district. All their property lies within the district of Hooghly, appendant to the Calcutta Provincial Court, where they likewise reside. The quabooleut also, upon which the claim is founded, was executed within the town of Calcutta in the jurisdiction of the Supreme Court. The plaintiffs' petition of plaint, with reference to the amount of claim is drawn upon a stamp of the value of 750 rupees, and was filed in this Court on the 1st of August, 1826. The petition of defence is written on stamp of the value of four rupees.

Extract from a Letter addressed to the Calcutta Provincial Court, dated 23d November, 1832.

Para. 2. In reply, I am directed to communicate to you the opinion of the Court that the suit being for a sum of money, and the defendants all residing in zillah Hooghly, your court is competent to take cognizance of it.

November 23d, 1832.

To the Acting Judge of Zillah Behar, dated 7th December, 1832.

No. 740.
1814
Reg. XXVIII Sec. 10, Cl. 2.

I am directed by the Court to acknowledge the receipt of your letter of the 19th ultimo, and in reply to inform you that the vakeel of the pauper plaintiff, whose claim was dismissed, is not entitled to receive any portion of the fee deposited by the defendant on account of her vakeel.

December 7th, 1832.

To the Commissioner of Circuit for the 14th Division, dated 7th December, 1832.

No. 741.
1821
Reg. III Secs. 3 & 4
1831
Reg V Sec. 18, Cl. 6.

I am directed by the Court to acknowledge the receipt of your letter of the 22d ultimo and its enclosure, and in reply to inform you that as sudder ameens are to be guided, under Sections 3 and 4, Regulation III. 1821, in criminal cases referred to them, by the rules prescribed for the guidance of assistants to magistrates, the Court are of

opinion that their processes in such cases should be issued under their own signatures, but under the seal and through the officers of the magistrate.

The Western Court, on the 11th January, 1833, concurred in the above construction.

December 7th, 1832.

To the Judge of Zillah Midnapoor, dated 14th December, 1832.

No. 742.

1831 Reg. IX. Sec. 8.

I am directed by the Court to acknowledge the receipt of your letter of the 28th ultimo, and in reply to inform you that in order to provide against the possible loss of the original proceedings in cases appealed to this Court in their transmission, the Court deem it necessary that copies be retained of all original papers so sent; but with regard to the papers which should be sent, I am directed to refer you to Section 8, Regulation IX. 1831, and to observe that the Court's circular order of the 18th May last directs that the original papers shall not be copied or sent with petitions of appeal filed in the lower court under the rule contained in Section 8, Regulation XXVI. 1814, until called for a precept.

1831. Reg. V Sec. 16, Cl 3 Reg IX Sec 2, Cl 2.

2. With reference to your last paragraph I am directed to refer you to the circular order of the 24th August last, which explains that all first appeals must be admitted as a matter of right, provided they be preferred within the period prescribed by the Regulations: so that the confirmation of the decision of the lower court, prior to a perusal of the original proceedings, is to be considered, not as a rejection, but a final dismissal of the appeal on consideration of its merits.

December 14th, 1832.

To the Judge of Zillah Rajshahye, dated 14th December, 1832.

No. 743.

1824. Reg IV

I am directed by the Court to acknowledge the receipt of your letter of the 1st instant and its enclosures, and in reply to communicate to you their opinion that a register of deeds not being the register of the zillah or city court, is entitled, while officiating for the judge during the absence of the latter, to fees on the registry of all deeds executed by him.

The Western Court, on the 5th February, 1833, *concurred in the above construction.*

December 14th, 1832.

From the Judge of Zillah Purneah, dated the 5th December, 1832.

No. 744.

No decree can be enforced against a third person, not a party thereto.

I have the honor to request that you will obtain for me the opinion of the Court of Sudder Dewanny Adawlut on the following case.

A person, A, possesses a certain portion of land, say 200 beegahs, of which he sells 50 to B, and subsequently executes a mortgage deed to C, by which, on borrowing a

certain sum of money, he mortgages the whole 200 beegahs to him; but possession is not given. On the expiration of the period fixed for the repayment of the loan, C applies to the Court for a foreclosure of the mortgage, and, after going through the necessary forms, brings an action for making the sale absolute, and obtains a decree in his favor for the whole 200 beegahs. On proceeding to execute this decree, it appears that 50 beegahs have been already sold to B. What I wish to be informed is, whether the decree, which was given in the absence of B, whose purchase was not made known to the Court till after it had been passed, must be fully enforced, or whether the prior purchaser, B, (whose purchase at the time he made it was good and valid), can be allowed to retain his 50 beegahs? In other words, must a decree given by a court be enforced according to its letter, however it may interfere with the rights of absent parties?

To the Judge of Zillah Purneah, dated 21st December, 1832.

I am directed to acknowledge the receipt of your letter of the 5th instant, and in reply to inform you that no execution of a decree will hold beyond the right of the party against whom it may have been passed: consequently, in the case put by you, B, not having been a party to the suit instituted by C against A, cannot be ousted from his land in execution of the decree passed in favor of C.

December 21st, 1832.

From the Judge of Zillah 24-Pergunnahs, dated 13th December, 1832.

No. 745.

I request you will have the goodness to obtain the opinion of the Court on the following points.

1806
Reg II Secs 4 & 5

Query 1st. If a defendant absconds or shuts himself up in his house to avoid a process taken out against him agreeably to Section 4, Regulation II. 1806, how am I to proceed? Is the property of the defendant to be attached or not, in the event of the plaintiff applying for that purpose?

Query 2d. In the event of the nazir or the person on his part deputed to serve process agreeably to Section 4, Regulation II. 1806, entering freely and without any obstruction being offered into the *compound* of the house of the defendant; may he proceed to force an entrance into the house, in the event of the defendant shutting the doors of the house against him?

To the Officiating Judge of Zillah 24-Pergunnahs, dated 21st December, 1832.

I am directed by the Court to acknowledge the receipt of your letter of the 13th instant, and in reply to the first question put by you, to refer you to Section 5, Regulation II. 1806, which expressly authorizes the attachment of the property of the defendant to secure the execution of the ultimate judgment, where sufficient security is not given: and with reference to the 2d question, to state that a mere entry into the compound does

not authorize the officer in charge of a process to break open an outer door, in order to serve it.

December 21st, 1832.

From the Register of Western Provinces to the Register of the Presidency Court, dated 9th November, 1832.

No. 746.
1808 Reg X Secs 6 and 7. 1816 Reg XVIII Sec 2. 1831 Reg IX Sec 3

I am directed by the Court to transmit for the purpose of being laid before the Presidency Court of Nizamut Adawlut, the annexed copies of a correspondence which has taken place between the commissioner and the magistrate of zillah Goruckpore and this Court, regarding the power of commissioners to address orders, calling for information, direct to the officers on the jail establishment of a zillah.

2. The letter addressed by order of the Court to the commissioner under date 5th October, was inadvertently despatched without previous reference to the Presidency Court. As a second reference has since been made, and the omission brought to their notice, a copy of that letter is herewith forwarded, and the opinion of the Presidency Court is solicited with regard to the construction therein adopted. The final decision of the question will be deferred until the receipt of an answer.

The interpretation of the law which the Court propose to adopt is founded on the 6th and 7th Sections of Regulation X. 1808, under which the commissioner, in his capacity of superintendent of police, is competent to "issue process either by "means of his own officers or through the local authorities;" also "to correspond "publicly or secretly with the officers of Government in every department upon "subjects connected with the discharge of his duty;" the duty of superintending the jail establishments having been entrusted to superintendents of police by Regulation XVII. 1816. It is further worthy of remark that under the present system no authority superior to that of the commissioner exists in matters connected with the management of jails, the cognizance of the Nizamut Adawlut having been withdrawn from all cases "other than criminal trials."

From the Register of Western Provinces to the Commissioner of Circuit 9th Division, dated 5th October, 1832.

I am directed by the Court of Nizamut Adawlut for the Western Provinces to acknowledge the receipt of your letter of the 29th ultimo with its enclosures, containing copies of a correspondence which has taken place with the magistrate of zillah Goruckpore, regarding certain perwannahs addressed by you to the darogah and jemadar of the jail.

2. In reply, I am directed to observe that the magistrate of Goruckpore appears to have been under an error in supposing that commissioners are not empowered to address perwannahs calling for information to the subordinate jail and police officers.

3. The Court however are of opinion, that this course should not be adopted by the commissioner, except under special circumstances which render it necessary to deviate from the ordinary practice. You will be pleased to make the magistrate aware of his error, transmitting for his information and guidance, copy of this communication.

From the Register of the Nizamut Adawlut at Calcutta to the Register of the Court for the Western Provinces, dated 28th December, 1832.

I am directed by the Court to acknowledge the receipt of your letters of the 9th and 30th ultimo, and 12th instant, and their respective enclosures, on the subject of the power of a commissioner of circuit to issue orders direct to the jail officers.

2. The Presidency Court having duly considered the papers referred to, are of opinion, that as the magistrate of Goruckpore has distinctly avowed any intention of questioning the power of the commissioner to interfere with his police officers, the decision on the reference should be confined to the point "whether a commissioner of "circuit is authorized by the Regulations to issue orders direct to jail officers regarding "the management of the jails." They are of opinion that neither the regulations nor the jail rules authorize the commissioner, either as judge of circuit or as superintendent of police, to exercise such interference. They are moreover of opinion that Sections 6 and 7, Regulation X. 1808, referred to by the Western Court, are applicable solely to matters of police, and cannot be considered to bear on the point at issue; and that the duty imposed on the superintendent of police by Section 2, Regulation XVII. 1816, of preparing and keeping up a register of jail establishments, was not intended to confer upon him the power of in any way interfering directly with the internal management of the jail or the officers attached to it.

3. With reference likewise to the concluding part of your letter of the 9th ultimo, the Presidency Court feel themselves constrained to dissent from the opinion that the cognizance of the Nizamut Adawlut of cases connected with the management of jails has been withdrawn; the rule contained in Section 3, Regulation IX. 1831, not being in their judgment, applicable to matters of that nature.

4. Under these circumstances I am directed to request that you will lay this letter before the Western Court for re-consideration, or, if necessary, that the question may be referred for the decision of Government.

On the 8th February, 1833, *the majority of the Western Court, on re-consideration of the subject, concurred in the above construction of the law.*

December 28th, 1832.

From the Commissioner of Circuit 6th Division to the Register of the Nizamut Adawlut Western Provinces, dated 19th November, 1832.

No. 747.

With reference to the last paragraph of your letter of the 26th ultimo, I have the honor to transmit a letter, with its enclosure, from the officiating head assistant to the

magistrate at Futtehpore under date the 12th instant, respecting the general order issued by a former magistrate prohibiting the sale and transfer of property without giving intimation to the police.

From Officiating Head Assistant to the Magistrate of Futtehpore to the Commissioner of Circuit 6th Division, dated 12th November, 1832.

In reply to your letter of the 6th enclosing an extracted paragraph of a letter from the register to the Nizamut Adawlut calling upon me to furnish any explanation upon the subject of any general order that may have been issued by a former magistrate prohibiting the sale and transfer of property without giving intimation to the police, I beg to state that after enquiry into the records of this office I have discovered a written order to that effect. It appears also to be generally understood that such conduct is to be pursued by buyers and sellers of property.

From the Register of Western Provinces to the Register of the Presidency Court of Nizamut Adawlut, dated 30th November, 1832.

I am directed by the Court to transmit for the purpose of being laid before the judges of the Presidency Court the annexed correspondence with the commissioner of the 6th division, regarding an order issued by a magistrate of zillah Futtehpore prohibiting the transfer of cattle and other goods without the permission of the police.

2. Should any order with regard to a similar prohibition have been already issued by the Presidency Court, the Court request that a copy of the same may be transmitted for their information. If no orders have been hitherto passed on the subject, the Court propose, with the concurrence of the Presidency Nizamut Adawlut, to annul the order in question, and to direct the commissioner to take measures for freeing the sale and transfer of property in zillah Futtehpore from the impediments thrown in its way by this prohibition, which they consider highly objectionable.

To the Register of the Nizamut Adawlut for the Western Provinces, dated 28th December, 1832.

I am directed by the Court to acknowledge the receipt of your letter of the 30th ultimo, and its enclosures, and in reply to inform you that I have been unable to discover any orders issued by the Court on the subject of the interference of the police in the sale and transfer of property; and to communicate to you the concurrence of the Presidency Court in the order proposed to be issued through the commissioner of circuit of 6th division to the magistrate of Futtehpore, prohibiting such interference.

December 28th, 1832.

Extract of a letter from the Judges of the Provincial Court of Appeal for the Division of Bareilly, under date the 21st December, 1832.

Para. 2. We at the same time beg to submit whether the Court of Appeal be not distinctly prohibited by existing regulations from entertaining appeals from the zillahs in which Regulation V. 1831, has taken effect, from decrees or other orders made previous to the introduction of Regulation V. 1831, such appeals not having been presented in the zillahs or to this court till after the introduction of that regulation. An order of the superior Court, however, we consider called for to satisfy the public mind of the correctness of our construction, as above, of existing regulations or to alter our constructions.

No. 748.
1831.
Reg V. Sec 27.

To the Judges of the Provincial Court of Appeal, for the Division of Bareilly, dated 4th January, 1833.

On the point referred in the 2nd paragraph of your letter of the 21st December last, I am directed to state the Court's opinion that no appeals can be admitted in your court in cases originating in zillahs in which Regulation V. 1831, has been introduced; unless the application for the admission of appeal is preferred previously to the date fixed on for the commencement of the operation of that regulation.

The Presidency Court, on the 25th January, 1833, concurred in this construction.

January 4th, 1833.

To the Officiating Magistrate of Zillah Furruckabad, dated 4th January, 1833.

I am directed by the Court to acknowledge the receipt of your predecessor's letter of the 26th ultimo, reporting the occurrence of a suttee in your district.

No. 749.
1829
Reg. XVII.
C. C. 4th Dec. 1829.

2. The Court are gratified to observe that the persons who assisted in burning the woman, and in eluding the attempt of the police to prevent the suttee, have been committed for trial at the sessions.

3. With regard to the remarks contained in paragraphs 4, 5 and 6 of the communication under acknowledgment, the Court observe that they do not agree with Mr. Shore in deeming the circular order of the 4th December, 1829, liable to be understood as prohibiting the use of force in the event of an attempt to persist in performing the ceremony after due warning: the Court observe that paragraph 4 of that circular order distinctly contemplates the occasional use of forcible interference, and directs that it should be used with circumspection; and the reference to Clause 2d, Section 3d, of the regulation in paragraph 3 of the instructions to the police, renders it sufficiently clear that the dissuasion and remonstrance therein recommended are by no means intended to supersede the use of force, in case of the milder means proving of no avail. The Court conclude that copies of the regulation were circulated with these instructions in your zillah as directed by the 2d paragraph of the circular order.

4. The Court are not aware of the necessity of annexing any further penalties to the offence than those laid down in the regulation itself. The proposal for subjecting

to pecuniary fine the zemindar within whose estate the suttee takes place, appears contrary to the general principle of the existing laws in matters of police, and consequently objectionable.

The Presidency Court, on the 1st February, 1833, concurred in this construction.

January 4th, 1833.

Extract of a letter from the Session Judge of Zillah Cuttack to the Register of the Presidency Court of Nizamut Adawlut, dated 15th December, 1832.

No. 750.
1803.
Reg LIII.
Sec. 3, Cl 1.
Sec. 4, Cl. 4.

Para. 4. I beg here to observe that the joint magistrates appear to have imbibed the idea that a number of persons going out and committing a robbery is sufficient to constitute the offence of dacoity or gang robbery, although it is not proved that they were guilty of any act of aggravation, or were armed, nor that the prisoners were in fact guilty of any thing but theft unattended with aggravating circumstances.

Extract of a letter addressed to the Session Judge of Zillah Cuttack, in reply to his letter of the 15th December, 1832, *dated 4th January*, 1833.

Para. 2. The Court direct me to observe that you have entirely mistaken the meaning of the term dacoity or gang robbery, and that the idea entertained by the joint magistrates, as stated in your fourth paragraph, is correct. In Clause 1, Section 3, Regulation LIII. 1803, it is distinctly declared that any person or persons, "who shall, in the day, or in the night, go forth with any offensive "weapon, *or in a gang with or without an offensive weapon*, with the criminal "intent of committing *robbery*, and shall, by force or intimidation, *rob* or *attempt* "*to rob* any person or persons, shall be deemed guilty of the crime of robbery by open "violence," or dacoity—and in Clause 4, Section 4, of the same Regulation, the mere act of going forth with a gang for the purpose of committing *robbery* is declared punishable with imprisonment not exceeding seven years.

January 4th, 1833.

To the Commissioner of Circuit for the 15th Division, dated 4th January, 1833.

No. 751.
1817.
Reg XXV.

I am directed by the Court to acknowledge the receipt of your letter of the 10th ultimo, and its enclosure, from the magistrate of the city of Dacca, requesting their opinion as to the propriety of the magistrate's interfering to regulate the exchange of copper into silver; and in reply to inform you, that the Court are of opinion, that as Regulation XXV. of 1817, contains no penal clause which would sanction the interference of the magistrate, he was right in refraining from interposition in the matter. Copies however of your letter and its enclosure will be submitted for the orders of Government.

January 4th, 1833.

752.
4 January, 1833

From the Acting Judge of Zillah Bundelkhund to the Register of the Court of Sudder Dewanny Adawlut, Western Provinces, dated 3d December, 1832.

No. 752.
1806. Reg II Sec. 10. 1827 Reg. V

I have the honor to submit copies of Persian correspondence between the collector and deputy collector of the southern division of Bundelkhund and this court relative to realizing the amount of a decree of court from the attachment of the defendant's landed property, and to request the instructions of the Court with a view to my future guidance.

2. Precepts were addressed by me to the deputy collector and collector to attach the lands of Ramtapershaud and Gunput Roy Pundit, defendants, and the replies received from those officers being nearly word for word and the case nearly similar, copies of one and the same Persian proceeding dated 13th November, 1832, were sent to each of them, again directing them to execute the orders of the Court agreeably to the provisions of Section 39, Regulation XXVII. 1803 and Section 3, Regulation V. 1827.

3. In the 1st case, namely, that of Gunput Roy, the Court will observe that the defendant, who was cast in the suit, petitioned that his jageer might be attached and the proceeds appropriated to the liquidation of the monies decreed, and the opposite party, the decree holder, assented to this arrangement; the deputy collector however demurred to the Court's orders on the grounds that "no Regulation ordered the collector to attach "lands for this purpose," and proceeded to quote Section 9, Regulation III. 1803, Section 5, Regulation II. 1806, and Section 2, Regulation V. 1827; meaning of course that the lands of the defendant ought to be sold, and not attached.

4. I beg however to submit that the only legitimate grounds upon which the deputy collector could have demurred to the Court's orders directing attachment of lands were these, viz. that the lands were in khas management, or that they were liable to resumption, and that process to that effect had commenced, or that the Government had some claim or other upon them. No such reasons however are urged in his proceedings. He reasons as to the *legality* of the Court's realizing monies decreed by this process of attachment, and notwithstanding that I directed attachment either through a tehsildar or an ameen specially appointed for the purpose, (in which latter case no increase of business could accrue, and all expenses would be defrayed by the defendant,) he states in conclusion that attaching lands gives trouble to the revenue authorities.

5. It appears therefore to me that Government having no claim to the land, and the order for attachment through an ameen (to be specially appointed for the purpose) having been issued by the Court, the deputy collector exceeded his powers in demurring on the grounds he did; and that his duty was purely ministerial, namely, to obey the Court's orders agreeably to Section 39, Regulation XXVII. 1803, and Regulation V. 1827.

6. I beg however to state that I think the deputy collector's legal view of this case (supposing him authorized to advance his opinion,) is wrong; he states no regulation orders the collector to attach lands with a view to realize monies decreed; by which I presume he means no regulation authorizes the Court to order such attachment. To this I beg to reply that no regulation prohibits it, the ordinary process for realizing monies decreed is, as is well known to all, laid down in Section 2, Regulation

III. 1803; but this regulation of course pre-supposes that the plaintiff has no other remedy than compulsion, that selling the lands or attaching the person of the defendant is necessary, that in short doing so is his last though legal resource. I cannot suppose that in the event of both plaintiff and defendant agreeing to realization by attachment (they being the only interested parties,) the civil court must of necessity proceed to sell the defendant's hereditary property or imprison him, contrary to the wish of him to whom the monies are due. I do not think such a procedure would be warranted by the spirit of the regulations or by justice.

7. I beg further to submit that agreeably to the letter of Section 10, Regulation II. 1806, the orders of this court must be considered legal. The above enacts that the civil courts are in general restricted from granting indulgence of time in the satisfaction of a final judgment, "unless the party in whose favor the decree is passed, shall consent to "waive his right of immediate enforcement under an engagement for gradual payments or "otherwise." Now it appears to me quite clear that realizing sums decreed by attachment of land or in other words from the collections, from harvest to harvest, or at the periodical collections, is to all intents and purposes "a gradual payment" by instalments, at the same time the land being under attachment by the court through the collector, supersedes the necessity of security (either malzamin or hazirzamin,) required by the regulation above quoted.

8. The reply of the deputy collector was first received, and the only difference between the original orders of this court addressed to him and to the collector, was that the collector was ordered to attach through the tehsildar; but subsequently, as the Court will see from a perusal of my Persian rubukary of the 13th November, 1832, I again directed attachment, but stated that it should be by an ameen. The collector however still insists (in answer to my detailed statement,) that my orders are illegal and contrary to the regulations, which regulation he does not say.

9. Both the above officers having obeyed the Court's instructions under a protest of reference to higher authority, I consequently have deemed it necessary to trespass thus at length the reasons which induced me to urge the execution of the Court's orders and to obtain a rule for my future guidance.

Proposed letter from the Register of the Sudder Dewanny Adawlut, Western Provinces, to the Acting Judge of Bundelkhund, dated the 21st December, 1832.

I am directed by the Court to acknowledge to receipt of your letter of the 3d instant.

2. In reply, I am directed to inform you that the arrangement for preventing of the sale of the estates in question by retaining them under attachment until the amount due has been realized from the proceeds, appears to the Court in the light of an adjustment between the parties themselves; the judge being incompetent to originate such an order himself. In attaching the estate therefore the judge acts under the applications of the parties, and not under the provisions of the regulations quoted in the 2d Section of

Regulation V. 1827, and alluded to in the 3d Section. Under this view of the subject the Court are of opinion that you were not competent to issue directions to the collector under Section 3, Regulation V. 1827, to attach, in the instances detailed in your letter; but should have proceeded to make the attachment yourself, deputing an ameen for the purpose, and in fact merely carrying directly into effect the arrangement for payment of the amount of the decrees, to which the parties to the suits had agreed.

From the Register of the Sudder Dewanny Adawlut at Calcutta to the Officiating Secretary to Government in the Judicial Department, dated 1st February, 1833.

I am directed by the Court to request you will lay before the Honorable the Vice President in Council the accompanying copies of a letter, and its English enclosures, from the register of the Court of Sudder Dewanny Adawlut for the Western Provinces, dated the 21st December last.

2. The Presidency Court concur in the opinion expressed by the Western Court that the zillah judge was competent, under the circumstances stated, to attach the lands in question: but with reference to the intent and spirit of Regulation V. 1827, as expressed in the preamble, that "it is expedient in all cases of attachment of landed property under orders of the courts of justice, that the management of the estate attached "should be placed under the superintendence of the collectors of land-revenue," they do not concur with them in thinking that the judge ought himself to have made the attachment through an ameen, but that it was incumbent upon him to issue the orders he did to the collector; the attachment having been induced by a private adjustment between the parties, not making any difference in the course he was legally bound to pursue towards effecting it.

3. Differing therefore from the Western Court on a construction of the law, the Court direct me, under paragraph 2 of the resolutions of Government under date the 6th December, 1831, to request that you will submit the point at issue for the decision of Government.

The Government, on the 8th March, 1833, *concurred in opinion with the Calcutta Court. February 1st*, 1833.

From the Judge of the Dacca Court of Appeal to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 18th January, 1833.

No. 753.
1831.
Reg. V. Sec. 27.

I request you will lay this letter before the judges of the Court of Sudder Dewanny Adawlut for their opinion and orders.

2. Petitions for the execution of decrees in cases appealed from zillah courts continue to be presented subsequently to the jurisdiction of the provincial court having been suspended under Section 27, Regulation V. 1831. I therefore request to be informed whether it be the opinion of the Sudder Dewanny Adawlut that Clause 2 of the above Section leaves the provincial court the power of receiving and acting upon such petitions

as heretofore, as well as of receiving in the course of execution of such decrees petitions appealing against any irregularity, or errors or deviation from the decree on the part of the zillah judge.

3. The Regulation is silent on the subject of the execution of decrees, and a strict adherence to the letter would prevent any interference or the receiving of any sort of appeal "in any matter which may arise after the date aforesaid."

4. A petition for execution of a decree, may perhaps not be considered a matter so arising, but the disobedience of any order or the departing from the decree in executing it, would clearly be a "new matter arising after the date aforesaid;" and it is obvious that it would be an absurdity for a provincial court to order the execution of a decree, without having the power to enforce that order. I am therefore compelled to solicit the superior Court's opinion and orders.

To the Provincial Court of Appeal, Dacca, dated 1st February, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 18th ultimo; and in reply to inform you that they are of opinion that you are competent, under the 2d Clause of Section 27, Regulation V. 1831, to receive an act upon petitions for the execution of decrees appealed from the zillah courts as heretofore, as well as to receive, in the course of the execution of such decrees, petitions appealing against any irregularity, or errors or deviation from the decree on the part of the zillah judge.

The Western Court, on the 1st March, 1833, concurred in this construction.

February 1st, 1833.

To the Commissioner of Circuit for the 15th Division, dated 1st February, 1833.

No. 754.

1793 Reg IX Sec 10 1808 Reg VI Sec 10 1825 Reg VIII Sec. 5.

I am directed by the Court to acknowledge the receipt of your letter of the 19th ultimo, and its enclosure, and in reply to inform you that they are of opinion that you are not competent, as commissioner of circuit, to fine a person under the regulation referred to by you (Section 5, Regulation VIII. 1825); but that, as regards the complaint against the nazir and peons of the magistrate's office, you possess, in your capacity of superintendant of police, the power of a magistrate in the punishment of false and malicious complaints.

February 1st, 1833.

From the Commissioner of the Saugor and Nerbudda Territory to the Register of the Sudder Nizamut Adawlut, Western Provinces, dated 24th January, 1833.

No. 756

1793 Reg LIII Sec 2, Cl 7 1817 Reg XVII Sec 8, Cl 4 1829 Reg XII.

A case of an attempt at murder by poisoning having been committed for trial before me, I had intended to have referred the case for the orders of the Court, as directed in your letter of the 13th April 1832; but I shall delay doing so, till I receive a reply to this letter, for several reasons.

1st. It would appear by the Circular of the 7th May, 1824, that trials for administering poison with intent to rob alone should be sent for the Court's orders. The charge before me is for administering poison out of jealousy.

2d. By Section 4, Regulation XII. 1829, it would appear to have been the intention of the legislature, that the courts of circuit should decide cases of attempt of poison, and the Nizamut Adawlut to revise their orders in aggravated cases: but whether the courts of circuit may pass a sentence exceeding seven years' imprisonment seems dubious, though I am inclined to think, that the spirit of Regulation XII. 1829, is in favor of the practice.

To the Commissioner in the Saugor and Nerbudda Territory, dated 7th February, 1833.

I am directed by the Court of Nizamut Adawlut for the Western Provinces to acknowledge the receipt of your letter of 24th ultimo.

2. The Court observe that although the crime of administering poison with intent to murder when accompanied by robbery, burglary or theft, or attempt to commit the same, is especially provided for by Clause 4, Section 8, Regulation XVII. 1817; no specific punishment has been prescribed by any Regulation in force for the simple offence of administering poison with intent to murder, death not ensuing; this last mentioned crime comes consequently under the general rule laid down in Clause 7, Section 2, Regulation LIII. 1803, by which commissioners are empowered (and by Regulation XII. 1825 required) to pass sentence not exceeding seven years' imprisonment, the authority to call for the proceedings and enhance the punishment being reserved to the Nizamut Adawlut by Section 4, Regulation XII. 1829.

3. The 2d Section of Regulation XII. 1829, appears to the Court to refer solely to cases of wounding, and being a highly penal law, cannot be construed to extend to cases of administering poison.

The Presidency Court, on the 1st March, 1833, *concurred in this construction.*

February 7th, 1833.

Resolution of the Court of Sudder Dewanny Adawlut held at the Presidency, under date the 8th February, 1833.

No. 756.
1825.
Reg. II. Sec. 3.

A question having arisen in a case decided by two judges, both of whom continue attached to the Court, whether on an application for a review of judgment such application should be submitted for the opinion of both of the judges, or whether the opinion of one for the admission or rejection of the review is final, the Court are of opinion, on due consideration and with reference to the rule laid down in the case of Musst. Ujgnasee regarding the admission of a review of judgment in the provincial court of Patna, that in such cases the petition of review should be laid before the judges who passed the decrees; and that in the event of a difference of opinion between them, as to the

admission or rejection of the review, the matter should be referred to one or more judges of the Court, until the question be determined by a majority of voices.

The Western Court, on the 15th March, 1833, concurred in this construction.

February 8th, 1833.

From the Officiating Commissioner of Circuit, 7th Division, to the Register of the Sudder Nizamut Adawlut, Western Provinces, dated 2d February, 1833.

No 757
1793. Reg. IV Sec. 6
1803. Reg. III. Sec. 7

I beg that you will submit for the consideration of the Court, the accompanying copy of a letter from the magistrate of Banda, dated the 25th ultimo; containing two questions, first, whether in cases of bribery, a magistrate is authorized to compel the party said to have administered the bribe, to give evidence on oath, and secondly, whether it is lawful to compel a mahajun to produce books or accounts supposed to contain information relative to the charge.

2. It appears to me that no person ought to be required to give evidence on oath, touching a bribe alleged to have been administered by himself, except with a distinct understanding that he is not to be held legally responsible for his share in the offence. With respect to the second query, I believe it is the practice of all courts to require the production of accounts as evidence, and I see no reason to doubt the lawfulness of so doing. A court may of course compel a mahajun to give oral evidence, founded on that which his books may contain, and the production of the books is the readiest and most conclusive mode of obtaining the requisite information. Should there be no special rules applicable to these points, I request that I may be furnished with the Court's opinion on the subject

From the Register of the Sudder Nizamut Adawlut, Western Provinces, to the Register of the Presidency Court, dated 8th February, 1833.

I am directed by the Court to transmit, for the purpose of being laid before the judges of the Presidency Court, the annexed copy of a letter received from the commissioner of the 7th division, under date the 2d instant.

2. The Court are of opinion that as the delivery of a bribe is a criminal act, and renders the person delivering it subject to a criminal prosecution as well as the receiver, a court of justice cannot compel a person to give evidence on oath touching a bribe alleged to have been administered by himself. Upon the second question referred by the commissioner, the Court observe that although no specific regulation exists on the subject, it has been the established practice of the Courts to call on mahajuns to produce books in evidence on cases pending before them, and they have reason to believe that such practice has been held by the Presidency Court to be unobjectionable. The Court therefore propose to inform the commissioner, with the Presidency Court's concurrence, that although the measure should be adopted with caution, and not unnecessarily, still the Courts possess authority to require mahajuns to produce their books in evidence,

757—759

8
13 Feb 1833

when an inspection of them may be necessary for a full understanding of the merits of a case pending before them.

The Presidency Court, on the 8th March, 1833, concurred in this construction, referring in regard to the 2d question, to Construction No. 270, dated 26th March, 1817.

February 8th, 1833.

To the Judge of Zillah Jungle Mehals, dated 15th February, 1833.

No 758.
C C 5 Nov 1812

The Court, having had before them your monthly civil statements for December last, observe that the moonsiff of Bhelaideha states that in certain suits on his file he cannot proceed until the expiration of six weeks. They presume this to arise from his having issued notices in these cases to the plaintiffs requiring them to appear, within the period of six weeks, to shew cause why their suits should not be thrown out on account of default. Should this be the case, the Court request that you inform the moonsiff that it is not incumbent on him to give so long a period for the appearance of the defaulting plaintiff, and that they consider eight days or a fortnight in ordinary cases a sufficient time to allow for this purpose.

February 15th, 1833.

From the Commissioner of Circuit, 15th Division, to the Register of the Presidency Court of Sudder Nizamut Adawlut, dated 2d February, 1833.

No. 759
53 Geo III C 155, Sec 55

1 have the honor to beg you will obtain for me the opinion of the Court on the following point.

2. The magistrate of Dacca has, I understand, committed for trial before the court of circuit a Mr. Wise, who has no license from Government for residence in his district, but who declares himself to be a West Indian, and therefore a British subject, not amenable to the native courts.

3. The question I wish to ascertain is, supposing this individual to be unable to prove that he is a British subject, which I suppose it will be regular to call upon him to do, am I to try him?

To the Commissioner of Circuit for the 15th Division, dated 15th February, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 2d instant, and with reference to the doctrine laid down in the case of Mandeville in the printed Reports of the Nizamut Adawlut, Volume 2, page 111, to state that unless Mr. Wise can prove that he is a British subject, you are competent to try him for any offence for which he may be committed.

February 15th, 1833.

From the Acting Magistrate of Shahabad to the Commissioner of Revenue and Circuit for the 10th Division, dated 23d January, 1833.

No. 760. 1810. Reg. XX. Sec. 18.

I have the honor to solicit your instructions in the following case, in which neither the Regulations nor the Nizamut Reports inform me how to act.

2. A sepoy, belonging to the detachment at Buxar, shot and killed the havildar who was mounting guard at the Fort gate, and the question is, whether the case should be tried by the civil authorities or by a court martial.

3. From Regulation III. 1809 and Regulation XX. 1810, I should consider that the case ought to be taken up by the magistrate, but by the Act of Parliament (4 Geo. IV. Cap. 8, Sections 2 and 7,) and the Articles of War, Section 9, it would appear to be cognizable either by the magistrate or by a court martial, and perhaps it more properly belongs to the latter, as it involves a breach of discipline in addition to the crime of murder.

4. I observe some cases in the Nizamut Reports which come very near the present, but none which seems quite to apply, inasmuch as they do not involve a breach of discipline; particularly the cases of Khedoo Ram, page 334 of Volume 2, of Munoowur, page 128 of Volume 3, of Sheoadhur, page 199 of Volume 3, and of Ram Jeewun, page 209 of Volume 1, of the Nizamut Adawlut Select Reports.

5. The charge of the police in the Buxar *bazar* is vested in the magistrate, but the detachment to which the sepoy belongs, is of course under the commanding officer.

To the Commissioner of Circuit for the 10th Divison, dated 15th February, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 30th ultimo, forwarding copy of one from the officiating magistrate of zillah Shahabad, dated the 23d of the same month, and in reply to inform you that they are of opinion that under Section 18, Regulation XX. 1810, the officiating magistrate is competent to take up the case alluded to in his letter.

February 15th, 1833.

To the Officiating Judge of Zillah Ghazeepore, dated 22d February, 1833.

No. 761. 1814. Reg. XXIII. Sec. 76.

In continuation of my letter of the 22d February last, I am directed to inform you that under the provisions of Section 76, Regulation XXIII. 1814, the judge is competent to employ the principal sudder ameens in the same manner as other sudder ameens in the adjustment of accounts, or in the investigation of disputes, or special matters of account, fact or usage, connected with the execution of decrees passed in the judge's court; but that under the regulations in force no authority exists for referring to such officers applications for the execution of any other decrees than those passed in the courts of the sudder ameens and moonsiffs.

The Presidency Court, on the 15th March, 1833, concurred in this construction.

February 22d, 1833.

762—763
22 Feb 1833

From the Judge of Zillah Futtehpore to the Register of the Sudder Dewanny Adawlut, Western Provinces, dated 16th February, 1833.

With reference to Clause 2d, Section 5, Regulation VII. 1832, I request the favor of your obtaining for me the opinion of the Court as to whether the principal sudder ameens, sudder ameens and moonsiffs should select the peons they may propose to employ for the execution of civil processes from the registered peons, who, previous to the new arrangements, belonged to the courts of the judge, sudder ameens and moonsiffs; or whether they are at liberty to nominate for the appointment of strangers. I beg leave to submit that if they are allowed to appoint new peons, a considerable number of old servants must necessarily be thrown out of employ.

No 762.
1832.
Reg VII Sec. 5, Cl 2

To the Judge of Zillah Futtehpore, dated 22d February, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 16th instant.

2. In reply, that I am directed to inform you that under the terms of the regulation cited by you, the nomination of the muskooree peons rests with the subordinate judicial officers, and that the judge is required to select from among the persons nominated such number of those whom he may consider the fittest for the duty as may appear requisite. The Court observe that as the native judicial officers possess the power of appointing and removing the ministerial officers of their courts, there can be no objections to entrusting them with the authority to nominate the persons who will be employed in executing their processes.

The Presidency Court, on the 15th March, 1833, concurred in this construction.

February 22d, 1833.

To the Session Judge of Zillah Beerbhoom, dated 22d February, 1833.

With reference to the concluding paragraph of your letter of the 29th December last, submitting the proceedings on the trial of Putit Haree chowkeydar, I am directed to inform you that, unless the prisoner deny *in toto* having made *any*, his mofussil or foujdary confession or examination adduced in evidence against him, though not proved by the testimony of the subscribing witnesses, should be read and explained to him at the time of taking his defence, and his admission or denial of the same entered on the record. I am directed to add that if the subscribing witnesses are unable to prove a confession, the judge should call upon the person by whom it was written, and the police officer, magistrate or other officer before whom it was made, and by whom it is attested, to depose to any circumstances required to be known connected with it.

No. 763.
Evidence to prove a confession

February 22d, 1833.

From the Judge of Zillah Jounpoor to the Register of the Sudder Dewanny Adawlut, Western Provinces, dated 16th February, 1833.

No. 764.
1801
Reg V, Sec. 9, Cl. 3.

I have the honor to request that you will be pleased to obtain for me the opinion of the Court regarding the rate of fees to be levied on exhibits and summonses which may now be filed in cases that were instituted before the introduction of Regulation V. of 1831. Clause 3, Section 9, Regulation V. of 1831, declares that the exemptions contained in Clause 2 shall not be held applicable to suits "instituted after" the date fixed for the operation of Regulation V. of 1831, but is silent regarding the rate of fees for suits now pending before the judge.

To the Judge of Zillah Juanpoor, dated 1st March, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 16th ultimo.

2. In reply, I am directed to inform you that the rate of fees to be levied on exhibits and summonses, which may be filed in cases instituted previous to the introduction of Regulation V. 1831, should be adjusted by the regulations applicable to such matters previous to the enactment of that regulation.

The Presidency Court, on the 29th March, 1833, concurred in this construction.

March 1st, 1833.

To the Judge of Zillah Bhaugulpore, dated 8th March, 1833.

No. 765.
1793
Reg. IV Sec 25.
1803.
Reg. III Sec 26

The Court, having had before them your letter of the 25th ultimo, requesting to be informed whether, in the event of a legal arrest, by a warrant issued from the civil court, and a forcible rescue from the custody of its officers, the magistrate, on proof of such rescue, is empowered to order the police forcibly to enter the house wherein the person rescued may be, and to apprehend him and forward him to the civil court; direct me to answer your question in the negative, and to observe that in the case supposed, the civil court should proceed against the offender agreeably to Section 25, Regulation IV. 1793.

The Western Court, on the 12th April, 1833, concurred in this construction.

March 8th, 1833.

Extract of a letter to the Commissioner of Circuit for the 13th Division, in reply to his letter of the 26th ultimo, dated 8th March, 1833.

No. 766.
Issue of general warrants declared illegal.

Para. 3. The Court are not satisfied with the explanation of the case of Agah Meean, No. 1 of statement No. 2. They are left from your report to infer that you directed that police officers should accompany Agah Meean for the purpose of assisting him to apprehend any persons he might point out as concerned in the dacoity in the house of Moonshee Abdool Kurreem, and if so, you have sanctioned the issue of a general warrant, which the Court hold to be illegal, and request you will immediately recall it.

March 8th, 1833.

To the Judge of Zillah Mynpooree, dated 8th March, 1833.

No. 767.
1817.
Reg III.
1829
Reg X Sch B Art. 9.
1831
Reg. V Sec 9, Cl. 3.
1832.
Reg. VII. Sec. 7

I am directed by the Court to acknowledge the receipt of your letter of the 25th ultimo.

2. In reply, I am directed to inform you that the exemption from stamp duty under Regulation III. 1817, included all cases, in whatever courts tried, below 64 rupees. This was extended by Section 9, Schedule B, Regulation X. 1829, to cases not exceeding 150 rupees; by Section 9, Regulation V. 1831, cases tried before moonsiffs to whatever amount are exempt from stamp. There is no subsequent enactment effecting this last rule. Clause 3, Section 9, Regulation V. 1831, however enacts that no suits however small the amount, which are instituted in the zillah court, shall be held exempt, whether eventually referred to the subordinate authorities or retained on the judge's file. Section 3, Regulation VII. 1832, prescribes the amount of stamp in cases instituted in zillah courts, viz. 4 rupees in cases above 1,000 rupees, and 1 rupee in original cases not above 1,000 rupees, as well as in appeals from sudder ameens and moonsiffs.

The Presidency Court, on the 29th March, 1833, concurred in this construction.

March 8th, 1833.

Extract of a letter from the Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 15th March, 1833.

No. 768.
1819.
Reg. II. Secs 22 and 27

Para. 3. By Section 2, Regulation X. 1829, all such Regulations then existing as relate to the imposition, levying and collecting of stamp duties, are rescinded; and by Section 17 of the same enactment the rules laid down in Schedule A and B are to be observed in future. In Schedule B no exemption is to be found in favor of suits, either original or appeal, instituted in the established courts of justice. The present is an appeal preferred under Section 27, Regulation II. 1819, to set aside a decision of the revenue authorities; and it follows therefore that the pleadings and other papers are liable, as in all other cases, to the full amount of stamp duty laid down in Article 8, Schedule B, Regulation X. 1829, subject to the modifications of subsequent enactments.

4. Should the Presidency Court concur in this opinion, the construction will be adopted as a rule of practice.

The Presidency Court, on the 29th March, 1833, concurred in this construction.

March 15th, 1833.

From the Acting Magistrate of Zillah Jessore to the Register of the Presidency Court of Nizamut Adawlut, dated 7th February, 1833.

No. 769.
1824
Reg XV Sec. 6.
1821
Reg. III. Sec. 2, Cl. 5.
1829
Reg. II Sec. 4.

May I request you will procure me the opinion of the Nizamut Adawlut whether a magistrate has the power under Section 4, Regulation II. of 1829, to confirm, alter, or revise in appeal, the order or decision passed in a suit, under Regulation XV. of 1824,

by an assistant who, invested with the special powers, is competent to try summary suits of dispossession; or is his order subject to an appeal by a magistrate under restrictions similar to those contained in Section 6, Regulation XV. of 1824?

To the Acting Magistrate of Zillah Jessore, dated 15th March, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 7th ultimo, and in reply to inform you that they are of opinion, with reference to Clause 5, Section 2, Regulation III. 1821, a magistrate is competent under the general powers vested in him to confirm, alter, or reverse in appeal, the order or decision passed in a suit under Regulation XV. 1824, by an assistant, who, invested with special powers, is competent to try such suits.

The Western Court, on the 4th April, 1833, *concurred in this construction.*

March 15th, 1833.

To the Commissioner of Circuit for the 10th Division, dated 15th March, 1833.

No. 770.
1819
Reg VII. Sec. 6.

I am directed by the Court to acknowledge the receipt of your letter of the 8th instant, submitting the explanation of the acting magistrate of Shahabad as to the award passed by him against Hidayut Ali and others.

2. In reply, I am directed to observe that Regulation VII. of 1819, was never intended to have, nor has, any reference to the wages of a mokhtar: it applies to workmen and domestic servants only. The Court therefore request that you will direct the acting magistrate to stay all further proceedings against the parties concerned, and return the money levied from Imambuksh and Jeetoo Khan as their share of the wages of the mokhtar.

The Western Court, on the 12th April, 1833, *concurred in this construction.*

March 15th, 1833.

Extract from a letter, dated 22d March, 1833, *addressed to the Session Judge of City Moorshedabad, in reply to his letter of the 16th idem.*

No. 771.
1818
Reg VIII Sec. 10.
1831
Reg VII. Sec. 2.

Para. 2. In reply, I am directed to inform you that the Court concur generally in the observations contained in the 3d paragraph of your letter; but with reference to Section 10, Regulation VIII. 1818, and your subsequent remarks regarding the powers of a session judge, they are of opinion that, had you arrived at the conclusion that the prisoners alluded to were notorious robbers of desperate or dangerous character, you were competent, under the section above quoted, and Section 2, Regulation VII. 1831, to have required them to furnish security for their future good behaviour, and in default thereof to have detained them in confinement.

March 22d, 1833.

From the Judge of Zillah Mynpooree to the Register of the Western Provinces, dated 18th March, 1833.

No. 772.
1814.
Reg. XXIII. Sec. 23.

Moonsiffs appointed under Regulation V. of 1831, being now allowed to execute their own decrees, I request to be informed whether it is still necessary for them to make a reference to the judge under the provisions of Section 23, Regulation XXIII. 1814, prior to requiring security or proceeding to attach the property of defendants in causes under investigation.

To the Judge of Zillah Mynpooree, dated 29th March, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 18th instant.

2. In reply, I am directed to inform you that as Clause 3, Section 8, Regulation V. 1831, declares that "the provisions contained in the existing regulations relative to the "trial and decision of suits already cognizable by moonsiffs, are equally applicable to "suits instituted before those officers under this regulation;" and as no special enactment exists rescinding the provisions of Section 23, Regulation XXIII. 1824, the Court are of opinion that moonsiffs are required to proceed as heretofore, making a reference to the judge previous to requiring security from defendants or proceeding to attach property in default of such security in cases still pending.

The Presidency Court, on the 26th April, 1833, concurred in this construction.

March 29th, 1833.

To the Officiating Commissioner of Circuit for the 3d Division, dated 29th March, 1833.

No. 773.
1829.
Reg X. Sch. B. Art. 3.

I am directed by the Court to acknowledge the receipt on the 25th instant of your letter of the 5th instant, together with its enclosures.

2. The Court are of opinion that from the rules laid down in Schedule B, Regulation X. 1829, it appears to have been the intention of Government that both the application for the copy (of proceeding or order) and the copy itself should be on stamped paper: the stamp paper assigned for the application being of a different value from that on which the copy is to be written. Sections 3 and 7 of the Schedule seem to point out this construction as that which was intended by the Government; and this view of the subject is confirmed by Section 5 of the same Schedule, which requires that even exhibits shall be accompanied by a petition when filed on the proceedings of a regular suit: it is also declared in Section 3, that the copy shall be written on one side thereof only.

The Presidency Court, on the 26th April, 1833, concurred in this construction.

March 29th, 1833.

From the Magistrate of Zillah Mymensingh, dated 21st March, 1833.

No. 774.
1807
Reg. IX. Sec. 19.
1828.
Reg. VIII. Sec. 2.

I have the honor to request that you will obtain for me the Court's opinion on the following question.

2 A magistrate being authorized by Regulation VIII. of 1828, in certain cases, to imprison for one year, and in failure of payment of a certain fine, for a further period of one year; so that the whole period of imprisonment shall not exceed two years, is he at liberty to use his discretion, under particular circumstances, in omitting the fine, and sentencing a prisoner at once to two years' imprisonment? The question is equally applicable in a different form to Section 19, Regulation IX. of 1807. I am induced to trouble the Court, from the circumstance of cases frequently coming before me, which call for the fullest punishment the magistrate can give, but to which the imposition of a fine does not appear to me very applicable; for instance, cases of "loot taraj" during the night, or even during the day, in which property to a considerable amount may be plundered, and cases of affray, in which to a man of any substance that part of the sentence which condemns him to imprisonment, is the only part carrying in it any punishment equal to his offence, as he considers the payment of one hundred or two hundred rupees as a mere trifle; in fact the same order, passed upon a rich and a poor offender, falls doubly heavy upon the latter, who is very often only the instrument of the former.

To the Magistrate of Zillah Mymensingh, dated 29th March, 1833.

In reply to your letter of the 21st instant, I am directed by the Court to inform you that a magistrate is not competent, under Section 2, Regulation VIII. 1828, to sentence a prisoner convicted of affray at once to two years' imprisonment.

March 29th, 1833.

No. 775.

1814 Reg. XXIII. Sec. 21, Cl. 2, and Sec. 22, Cl 3. 1832 Reg. VII, Sec. 5.

From the Judge of Zillah Mynpooree, dated 23d March, 1833.

Considerable inconvenience being experienced by the moonsiffs in the investigation of suits, from the necessity of examining the persons who witnessed the service of notices on defendants, prior to proceeding to try the causes exparte, I request to be informed whether the Court of Sudder Dewanny Adawlut for the Western Provinces see any objection to the strict observance of the rules laid down in Clause 2, Section 21, and Clause 3, Section 22, of Regulation XXIII. of 1814, being dispensed with in cases where the processes are served by registered peons under the provisions of Section 5 of Regulation VII. of 1832, provided the moonsiff issuing the process is satisfied from the chupprassie's report that the notice was duly served.

From the Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 4th April, 1833.

I am directed by the Court to transmit, for the purpose of being laid before the judges of the Presidency Court, the annexed copy of a letter received from the judge of zillah Mynpooree, under date the 23d ultimo.

2. The provisions of Clause 2, Section 21, Regulation XXIII. 1814, which require the evidence of witnesses besides the person who served the process, have reference to the circumstance that the process of moonsiffs' courts, was then served either by the plaintiff himself or any other person whom he chose to employ for that purpose; under the present system of issuing process through registered peons the same necessity does not however exist, and the evidence of the peon may be considered sufficient unless there are grounds to suspect his statement. Mr. Turnbull is of opinion that under the existing law the moonsiff is competent to exercise his discretion; but Mr. Colvin considers the provisions of Clause 2 above cited to be imperative, and that the evidence of witnesses to the service of process of others than the peon serving it must be taken in every instance. The point is therefore referred for the decision of the Presidency Court.

The Calcutta Court, on the 3d May, 1833, concurred in the opinion expressed by Mr. Colvin.

April 4th, 1833.

From the Judge of Zillah Moradabad, dated 23d March, 1833.

No. 776.
1814
Reg. XXVII Sec 29.

I solicit the favor of instructions from the Court respecting the payment of fees to the pleaders of pauper plaintiffs.

2. In all cases generally, it is provided, that on the decision of a suit the pleader shall receive the fees which may have been already deposited for him in the court by his client; the client, if successful, recovering the same from the opposite party.

3. It is also enacted by Section 29, Regulation XXVII. 1814, that the payment of the fees of pleaders deposited in the court shall not be stayed or postponed in consequence of the admission of an appeal.

4. In the event of a suit being brought to a successful issue by a pauper plaintiff, the payment of the fees of the pleader falls with the costs on the defendant, but no fees are deposited in the court, and the pleaders of this court imagine that they are entitled to enforce payment immediately by confining the person of the defendant in jail.

5. This course appears to me to be open to objection, as a pauper plaintiff may (and it is not very uncommon) sue an individual possessed of little property for a heavy sum of money; if he obtain a decree, the pleader may, should he not have it in his power to pay his fees, at once lodge him in the jail and thereby throw a considerable obstacle in the way of an appeal: indeed I think the immediate payment of the pleader of a pauper, by a wealthy person, when an appeal has been preferred, objectionable, for it must be obvious that in the event of the decision being reversed, the respondent, who is a pauper, can never restore to the appellant the money received by the pleader.

6. It was my wish in such cases that the payment of the fees of the pleader should be postponed until the final decision of the case in appeal; it is urged that this mode is contrary to the provisions of Section 29, Regulation XXVII. 1814, above noticed, and precedents in the time of former judges, in favor of imprisoning the defendant on the imme-

diate passing of the decree, have been quoted; I therefore solicit, not being aware of any circular orders on the subject, that I may receive the directions of the Court.

From the Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 4th April, 1833.

I am directed by the Court to transmit, for the purpose of being laid before the judges of the Presidency Court, the annexed copy of a letter received from the judge of zillah Moradabad under date the 23d ultimo.

2. The Court are of opinion that the law is rightly stated in the 2d and 3d paragraphs of the judge's letter, viz. that the payment of fees in pauper as well as other cases cannot be stayed on the ground that an appeal has been instituted from the first decision and although there may be a liability to inconvenience in particular cases, the general rule appears to the Court sound and just; they see no reason therefore to advocate the proposed change in the existing practice of the courts.

The Presidency Court, on the 8d *May,* 1833, *concurred in this construction.*

April 4*th,* 1833.

To the Judge of Zillah Purnea, dated 6*th April,* 1833.

No. 777.

1814. Reg. XXVIII. Sec. 6, Cl. 1. Sec. 11, Cl. 1.

I am directed by the Court to acknowledge the receipt of your letter of the 21st ultimo, and in reply to inform you that under the existing laws the judge is not authorized to demand sureties for the appearance of the agent of a pauper female plaintiff, and that such agent cannot be committed to the jail on the suit, preferred through his agency, appearing unfounded, vexatious, or wilfully exaggerated.

The Western Court, on the 3*d May,* 1833, *concurred in this construction.*

April 6*th,* 1833.

From the Session Judge of Moorshedabad to the Register of the Presidency Court of Nizamut Adawlut, dated 16*th March,* 1833.

Government, prosecutor,

vs.

Omrao Singh and others.

No. 778.

Discretion vested in magistrates to appoint a public prosecutor

It is not imperative on a magistrate to commit both parties in an affray.

Charge,—murder and wounding, and aiding and abetting in the affray.

With reference to my letter dated 19th February, 1833, I have the honor to state, in conformity with the circular order of 20th July 1832, that in the case noticed above I have annulled the commitment made by the acting joint magistrate for the following reasons:

1st. Where in the same trial principals and accomplices are committed, they must be principals and accomplices in the same crime, and committed as such.

But in this case the principals are committed for murder and wounding, and the accomplices are committed for an affray in which a man was slain.

2d. In a case of murder, the heir of the deceased, if there be one, ought to claim redress as prosecutor.

But in this case, though the proceedings shew there are several near relations of the deceased who are competent to prefer a claim as prosecutor, the joint magistrate has made Government prosecutor.

3d. In cases of affray, the combatants on both sides must be put on their trial, the Government being prosecutor.

But in this case, though some of the prisoners are committed as aiding and abetting in an affray, neither their opponents nor the persons wounded therein are committed.

For me to say what prisoners should be committed, or for what crime, would in some measure be a pre-judging of the case; nor could I do so probably on what appears on the record without calling for more evidence. I have therefore cancelled the commitment and directed the joint magistrate to revise the proceedings, and to give such orders regarding the commitment of those whom he sees proper to put on their trial, and the crimes laid to their charge, as, with reference to the above remarks and further enquiry, he may find necessary.

To the Session Judge of City Moorshedabad, dated 6th April, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 16th ultimo, reporting that you have annulled the commitment made by the joint magistrate in the case of Omrao Singh and others.

2. In reply, I am directed to observe that, although the Court will not in the present instance interfere with your order, a magistrate is perfectly justified in exercising a discretion in appointing the Government pleader to prosecute in cases of murder, notwithstanding that there may be near relations of the deceased competent to prosecute; and that it by no means follows, that in every case of affray both parties should be committed for trial.

April 6th, 1833.

From the Judge of Zillah Purnea to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 25th March, 1833.

No. 779.

1810. Reg XIII Sec. 2, Cl. 4.

With reference to paragraph 2 of my letter to your address dated the 30th November last, I have the honor to request the favour of being furnished with the orders of the Court regarding my competency to dispose of cases under Section 30, Regulation II. 1819, on which I have myself reported in my former capacity of collector. The cases of this nature are of the longest standing of any in Court, and I therefore feel desirous of having them disposed of.

To the Judge of Zillah Purnea, dated 12th April, 1833.

I am directed to acknowledge the receipt of your letter of the 25th ultimo, and in reply to inform you that the Court are of opinion you are competent to dispose of the cases therein referred to.

The Western Court, on the 10th May, 1833, concurred in this construction.

April 12th, 1833.

From the Officiating Judge of Zillah Shahabad, dated 19th March, 1833.

No. 780.

1793 Reg IV Secs 22 24 and 25. Reg V Secs 23, 25 and 26 1793. Reg III Sec 23, Sec 25 Cl 1 and Sec 26 Reg IV Secs 22, 25 and 26 1831 Reg V Sec 23 Cl 1 and Sec 16, Cl 3.

I do myself the honor to request the favor of the Court's opinion on the following points:

First.—Agreeably to Sections 22, 24, 25, Regulation IV. 1793, the zillah judges were not empowered to forward to Government decrees adjudging forfeiture of lands, and to realize fines, in cases of resistance to or evasion of process, provided the defendant preferred an appeal to the provincial court within the time prescribed for lodging appeals. These Sections also declare the decision of the provincial court of appeal to be final, in all cases where the annual produce of the lands adjudged to be forfeited, or the jumma payable to Government, supposing the offender to be a Government farmer, or the amount of the fine to be levied, may not exceed one thousand sicca rupees.

Sections 23, 25, 26, Regulation V. 1793, enact that all decrees adjudging forfeiture of lands, or farms, or orders for fines, passed by the provincial court in the first instance, in cases of resistance of process, and where the amount of annual produce, or jumma, or fine may not exceed one thousand sicca rupees, shall not be appealable to the Court of Sudder Dewanny Adawlut.

I request therefore to know whether the powers vested as above in the provincial court, are to be considered as vested in the judges of those zillahs into which the provisions of Regulation V. 1831, have been introduced, and where the jurisdiction of the provincial court has ceased; or whether the judges must now await the period of appeal to the Sudder Dewanny Adawlut, in the same manner as, agreeably to Sections 22, 24, 25, Regulation IV. 1793, they were directed to await an appeal to the provincial court. I of course allude to cases where the value of the forfeiture calculated as above, or the amount of fine may not exceed one thousand sicca rupees. In all other cases the law appears clear enough.

Second.—Is the decree of a judge, passed in appeal from the decision of a principal sudder ameen, and after a full hearing in the presence of the parties, to be executed through the principal sudder ameen or by the judge? Clause 3, Section 16, Regulation V. 1831, enacts that "if, after perusal of the record of the original suit and the "petition of appeal in the presence of the appellant or his vakeel, the judge shall see "no reason to alter the decision appealed from, it shall be competent to him to confirm "the same, and to communicate the order for confirmation through the court from whose

"judgment the appeal was made, to the respondent, with a view to enable such respon-"dent to take immediate measures for the execution of the decree." In this latter case however, there are no costs of appeal to be realized, whereas in the former costs must be decreed and realized.

To the Officiating Judge of Zillah Shahabad, dated 12th April, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 19th ultimo, and in reply to the first question to inform you that as by Clause 3, Section 28, Regulation V. 1831, all suits originally decided by the judge of a zillah, into which the provisions of Regulation V. 1831, have been introduced, are appealable to the Sudder Dewanny Adawlut, an appeal would lie from his decree adjudging forfeiture of lands or fines, in cases of resistance or evasion of process, without reference to the amount of the annual jumma, or produce, or fine, and that in such cases the judge should await the period of appeal to this Court in the same manner as by the enactments quoted by you, they were directed to await an appeal to the provincial court.

2. In reply to the second question the Court direct me to state that the decree of a judge passed in appeal from the decision of a principal sudder ameen must be executed under the general rules prescribed for the execution of decrees passed by the judge.

The Western Court, on the 10th May, 1833, *concurred in this construction.*

April 12th, 1833.

From the Judge of Mymensingh, dated 11th March, 1833.

No. 781.

1814.
Reg XXIII. Sec. 10 Cl. 2
1831.
Reg V. Sec. 20, Cl 5,

May I request of you to obtain for me the superior Court's opinion on the following points.

Is a magistrate competent to receive and act upon a charge of bribery, corruption or extortion against a moonsiff? or does it rest with the judge to determine whether he should be criminally prosecuted before the commissioner of circuit or session judge?

2. Should the latter be the case, would it be sufficient for the judge to direct the defendant to be committed on the proceedings held before him (as in cases of perjury), or would it be necessary for the magistrate to take the evidence *de novo* to satisfy himself that the evidence is sufficient to warrant the commitment of the defendant for trial before the commissioner of circuit or session judge?

3. I may add that I am borne out by Clause 2, Section 10, Regulation XXIII. 1814, in the opinion I have recorded that in the first instance such charges (against moonsiffs) should be made before the judge. It enacts "that no process shall be issued against a moonsiff who may be charged with corruption, &c. unless the judge shall be previously satisfied by sufficient evidence that there is reason to believe the charge to be well founded." I infer the evidence is to be taken before the judge in this instance, as also in the case of principal sudder ameens under Clause 5, Section 26, Regulation V. 1831, which is only an extension of the former rules regarding sudder ameens and moonsiffs to

principal sudder ameens; and further, if the evidence was not first taken before the judge, how could he exercise the powers vested in him under the provisions of the first, second and third Clauses of the Section just cited?

To the Judge of Zillah Mymunsingh, dated 12th April, 1833.

I am directed to acknowledge the receipt of your letter of the 11th ultimo and its enclosures, and in reply to inform you that the Court are of opinion, with reference to Clause 2, Section 10, Regulation XXIII. 1814, that a charge of bribery, corruption or extortion against a moonsiff is cognizable in the first instance only by the civil judge, who, after the requisite preliminary enquiry, will either give or refuse his assent to a criminal prosecution, which, in the former case, should be conducted by the complainant before, and be disposed of by, the magistrate as in any other case of misdemeanour.

2. The Court direct me to add, that this is not to be considered as barring the right of the judge to direct the vakeel of Government to prefer a charge of bribery, &c. against a moonsiff, and to conduct the criminal prosecution on the part of Government, whenever he may deem this measure expedient for the ends of justice.

The Western Court, on the 17th May, 1833, *concurred in this construction.*

April 12th, 1833.

From the Commissioner of Circuit for the 13th Division, dated 25th March, 1833.

No. 782.

1816. Reg XXII. Sec. 19 1817 Reg XX. Sec. 11, Cl 3

I have the honor to report for the Court's information that I have cancelled the commitment No. 2, of the calendar of cases presented to this Court for trial at the present sessions.

2. The prisoner is charged with attempting to extort money by demanding payment from the chowkeydars for authenticating their weekly certificates and refusing to perform this part of his duty without remuneration. I have directed the officiating joint magistrate to dispose of the case himself, under the provisions of Clause 3, Section 11, Regulation XX. of 1817.

To the Commissioner of Circuit for the 13th Division, dated 12th April, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 25th ultimo, and in reply to inform you that they approve of your annulment of the commitment of the prisoner alluded to, and to observe that, if the prisoner was a sudder bukshee, the provisions of Section 19, Regulation XXII. of 1816, as well as those quoted by you, would be applicable to the case.

April 12th, 1833.

From the Register of the Western Provinces to the Register of the Presidency Court of Nizamut Adawlut, dated 25th March, 1833.

No. 783.

1832. Reg. VI Sec. 4.

I am directed to communicate to you, for the purpose of being laid before the judges of the Presidency Court, the following opinion of this Court, containing a construction of

Regulation VI. 1832. Should the Presidency Court concur in the construction, the same will be published as a rule of practice among the subordinate courts of the Western Provinces.

2. The Court are of opinion that under the provisions of Section 4, Regulation VI. 1832, when a criminal trial is conducted with the assistance of natives in either of the forms laid down in Section 3 of the same Regulation, a difference of opinion between the presiding officer and the jury or assessors does not render a reference to the Nizamut Adawlut necessary; but the presiding officer is competent and required to pass final sentence under such a difference of opinion, under the same restrictions only as limit the issue of his sentence when he concurs in the verdict.

To the Register of the Nizamut Adawlut, Western Provinces, dated 12th April, 1833.

I am directed by the Presidency Court to acknowledge the receipt of your letter of the 25th ultimo, and to inform you that they concur in the construction of Section 4, Regulation VI. 1832, contained in it. At the same time they think the law should be altered, and that it should be made imperative on the presiding judge to refer the trial to the Nizamut Adawlut, whenever he may think the prisoner guilty in opposition to the verdict acquitting him or finding him guilty in a less degree or of a lower grade of crime, than he may consider to be established. They will communicate this opinion to Government when they submit their report on the Regulation, required by the 2d paragraph of the letter from the officiating secretary to Government in the judicial department, dated the 10th October last.

April 12th, 1833.

To the Officiating Judge of Zillah Tipperah, dated 19th April, 1833.

No. 784.

1831 Reg VIII. 1803. Reg II. Sec 11.

I am directed to acknowledge the receipt of your letter of the 2d instant, and in reply to inform you that the Court are of opinion that if the prisoner be in confinement in execution of a summary decree, passed by a collector under Regulation VIII. 1831, that officer is competent to release him on his presenting a petition under Section 11, Regulation II. 1806, and proving his insolvency; the pwers here tofore vested in the judge in such cases having been virtually transferred to the collector by the provisions of the Regulation first quoted.

The Western Court, on the 17th May, 1833, concurred in this construction.

April 19th, 1833.

From the Judge of Zillah Furruckabad, dated 16th April, 1833.

No. 785.

1803. Reg II. Sec 8.

Adverting to Section 8, Regulation II. 1803, I request the favor of instructions from the Court in the following case.

2. A suit has been filed, Nawab Hussen Alee Khan *vs.* Chote Beghum, (plaint 2557-5-4, rent of jahgeer) in which the defendant pleaded on the filing of the suit that

she was one of the nawab's dependants, (mootuwussil being the term in use here,) and the case was ordered as usual to be sent to the nawab for decision. The plaintiff however gave in a suwal stating that the nawab being a minor, all business was transacted by his guardian Nawab Ahmed Yar Khan, to whom the defendant in this case is related, and praying that the case may be retained in the zillah court.

Three other cases are pending, in which the same petition has been made, for the same reason.

To the Judge of Zillah Furruckabad, dated 26th April, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 16th instant.

2. In reply, I am directed to inform you that the circumstance of the nawab being a minor will not prevent the reference of the case in the usual manner: the decision will of course be given by the guardian of the nawab, instead of the nawab himself.

The Calcutta Court, on the 31st May, 1833, *concurred in this construction.*

April 26th, 1833.

To the Commissioner of Revenue for the 13th Division, dated 3d May, 1833.

No. 786.

Execution of a decree against an European British subject 1793. Reg XXVIII Sec 2. 1803 Reg XVIII Sec 2

I am directed by the Court to acknowledge the receipt of your letter of the 16th ultimo, and its enclosures, and in reply to inform you that a decree passed against an European British subject is to be enforced in the same manner as one given against a native, and, with reference to the fact noticed by the deputy collector, that the bond prescribed by Section 2, Regulation XXVIII. of 1793, was not executed in the present instance, to observe that Section 107, Cap. 155, 53 Geo. III. renders the execution of such bond unnecessary.

May 3d, 1833.

From the Judge of Zillah Purnea, dated 20th April, 1833.

No 787

Personal property sold in execution of decrees of Court must be paid for on delivery

There being no express rule laid down in the Regulations for the mode of recovery of sums of money from persons purchasing property at sales made by order of Court, I have the honor to request the superior Court's opinion regarding the course of proceeding to be adopted in the event of a person purchasing chattels or personal property and being allowed to remove it, and subsequently refusing to pay for the same, or restore the property. In such case can the recusant be proceeded against in either or all of the following modes?

First.—Can he be proceeded against as for a contempt?

Secondly.—Can he be committed to jail in default of payment, or restoration of property, as for a debt?

Thirdly.—Can his property be attached, and sold for recovery of the amount of purchase money due by him?

2. I am aware that the proper mode of conducting sales of moveable property would be to require payment before the articles were allowed to be removed; but not unfrequently, purchasers, especially when they are well known, are permitted, as a matter of favor, to take away goods before payment; and it is with respect to such instances, in which the indulgence is abused, that I am desirous of obtaining the Court's opinion.

To the Judge of Zillah Purnea, dated 3d May, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 20th ultimo, requesting to be informed as to the course to be pursued in the event of a person who has purchased chattels or personal property at a sale, and been allowed to remove them, subsequently refusing to pay for or restore the same.

2. The Court do not understand from your letter that any case of such refusal has actually occurred. They therefore deem it sufficient to state that in no instance should personal property be delivered up to the purchaser, until he has paid for it; and that if the nazir or other person entrusted with the sale deliver the property to the purchaser and the latter refuse to make payment, it will be at his own personal risk. He will be compelled to make good the price, and will have to recover the same from the purchaser by the regular course of law.

May 3d, 1833.

From the Judge of the Dacca Court of Appeal, dated 18th March, 1833.

No. 788. 1814 Reg XII.

I request you will submit to the judges of the Sudder Dewanny Adawlut the enclosed papers, and I solicit the opinion of that Court as to the liability of the pension therein alluded to in execution of decree.

2. It is in my opinion equally liable with any other property the party might possess, and it is obviously contrary to equity that he should live on his pension in ease and idleness, setting his creditors at defiance. Moreover such application of pensions has hitherto been the practice and unobjected to by the revenue authority, and there can be no doubt that the receipt of the treasurer of this Court, countersigned by a judge, will be a "legitimate acquittance in justification of the disbursement."

3. As courts of justice are by the circular order of the 14th December, 1832, deprived of the power of enforcing any of their orders issued to a revenue officer which the Board of Revenue may direct him to disobey, and so far bound to submit to fiscal authority, I request the Sudder Dewanny Adawlut will, in the event of their thinking the pension available property as above stated, give this Court full instructions how to proceed to insure obedience to any precept issued on the subject to the collector.

From the Secretary of the Sudder Board of Revenue to the Commissioner of Revenue for the Division of Dacca, dated 13th April, 1832.

I am directed by the Sudder Board of Revenue to acknowledge the receipt of your letter bearing date the 19th ultimo, and to inform you in reply, without intending to express any opinion of the validity of Mahomed Hossein's claim to the pension therein referred to, which is now under consideration, that they cannot sanction the payment of any allowances of the nature in question by the revenue authorities to any party whatever except the individual to whom the Government have specifically assigned them. The courts of law have other and perfectly effective means of enforcing their decrees against the party liable; but the officers to whom the payment of pensions is entrusted have no discretionary powers, and their only legitimate acquittance in justification of the disbursement of the public money, is the receipt of the pensioners.

Register's Report, dated 24th April, 1833, on a letter received from the Judge of the Dacca Court of Appeal, dated 18th March 1833.

The register having been directed to report what precedents are to be found in the Court on the subject of the attachment of a pension in satisfaction of a decree of court, begs leave to lay before the Court the following abstract of the only two cases which he has found:

Jyenarain Mookerjea, appellant,

versus

Bulram Rae, respondent.

Jyenarain Mookerjea, the appellant in this case, was desirous of having a pension, payable to respondent from the collectorship of Benares, attached, to satisfy the decree of this Court awarding to him the sum of rupees 950 12 6.

On the 31st October, 1827, the Benares Provincial Court refused to attach the pension, on the ground that it was contrary to the provisions of Regulation XII. 1814.

The matter coming before this Court with a return, Mr. C. Smith ordered, on the 14th November, 1827, that two-thirds of the pension then in deposit in the Benares collectorship, and two-thirds of what might afterwards fall due, should be paid over to appellant until the sum awarded to him should be paid.

On the 28th May, 1829, Mr. M. H. Turnbull—observing that the order of Mr. C. Smith, involving a reversal of the order of the Provincial Court, could not be legally passed by a single judge—ordered that it should be stayed, and being of opinion that the order for giving up the pension to the appellant was contrary to the provisions of Regulation XII. 1814, proposed the following order, and Mr. C. T. Sealy concurring with him, on the 1st August, 1829, it was issued to the Benares Provincial Court:

"Ordered, that the Provincial Court do not pay to the appellant any part of the "pension of the respondent, in satisfaction of the decree, without the respondent's "consent."

Kadir Ali Khan and others, heirs of
Akbur Ali Khan, petitioner,
versus
Moossummat Chowrassee, decree-holder.

The sum of 3205 rupees 8 annas being due to Moossummat Chowrassee from the estate of Akbur Ali Khan, under a decree of Court, the judge of the city of Patna, on the 19th January, 1829, ordered that it should be realized from a moiety of the pension paid by Government to the heirs of Akbur Ali Khan. The Patna Provincial Court having confirmed the above order on the 25th April, 1829, the petitioner appealed to this Court.

Mr. Rattray, on the 16th September, 1829, on the principle which governed the decision in the case of Jyenarain Mookerjea versus Bulram Rae, proposed the following order, which was passed with the concurrence of Mr. M. H. Turnbull, on the 6th February, 1830—"Ordered, that the orders of the Lower Courts be reversed; that no "part of the pension be paid to the decree-holder; and that if any part have been paid "to her, it be paid back to the pensioners."

To the Provincial Court of Appeal for the Division of Dacca, dated 3rd May, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 18th March last and its enclosures, and in reply to forward to you the accompanying copies of five roobukarees as per margin, (those alluded to in the preceding report,) from which you will perceive that the Court have ruled that pensions granted by Government are not liable to attachment in satisfaction of decrees of court.

May 3rd, 1833.

From the Commissioner N. Division Doab, dated 24th April, 1833.

No. 789.
1833.
Reg. II.

With reference to the provisions of Regulation II. of the present year, and the order of Government dated 29th ultimo, abolishing the Provincial Courts of Appeal of Benares and Bareilly from the 1st proximo, I have the honor to solicit the Court's opinion whether the original and appellate jurisdiction which vests in my office by the provisions of Clause 2, Section 9, Regulation I. 1829, ceases and determines by the provisions of the above quoted regulation and order, or whether I shall proceed to dispose of the cases pending before me.

To the Civil Commissioner N. Division Doab, dated 10th May, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 24th April last, requesting to be informed whether under the provisions of Regulation II. 1833, the original and appellate jurisdiction of your Court has ceased or otherwise.

2. In reply, I am directed to inform you that under Section 3 of the above mentioned regulation, all Provincial Courts are deprived of original jurisdiction; they will continue

however to exercise appellate jurisdiction until such time as the Governor General in Council shall, under the powers vested in him by Section 4, abolish the courts in question. No order under the signature of the secretary in the judicial department having been yet issued to this effect with regard to your court, you will continue to exercise your authority as a Court of Appeal, referring to the zillah courts all matters of primary jurisdiction under the rule laid down in Section 3.

The Presidency Court, on the 7th June, 1833, concurred in the construction.

May 10th, 1833.

From the Judge of Zillah Furruckabad to the Register of the Sudder Dewanny Adawlut, dated 30th April, 1833.

No. 790.

1831
Reg V Sec 16, Cl 3.

I have the honor to submit for the consideration of the Court the following question.

2. I should first advert to Clause 3, Section 16, Regulation V. 1831, and to your circular letter of the 24th August, 1832, paragraph 3d, as follows:

"On this point I am directed to observe that the rule contained in Clause 3, Section "16, Regulation V. 1831, alters the rule before in force no further than to allow the judge "to confirm the decision of the lower court without calling on the respondent to attend; "consequently the same mode of practice is to be followed as heretofore, except that, as "no costs can be incurred by the respondent until he be summoned to answer to the "petition of appeal, security for costs need not be demanded from the appellant before "the respondent is called upon to answer. A previous perusal of the petition of appeal "and decree is not necessary to the admission of the appeal. nothing further being "required than to see that the prescribed period of appeal has not expired, and that the "petition of appeal is written on paper bearing the prescribed stamp."

3. I am getting through the business as fast as I can, nevertheless it will be about three months before the appeals filed during the past month will be decided. In certain instances the appellants have petitioned to be allowed, without waiting for the appeal to be looked over by the judge, to bring forward witnesses to prove their case.

4. It seems to me that it would be hardly fair to allow this, without giving notice to the respondent, who, on hearing that the case was to be proceeded in, would come to court, perhaps appoint a vakeel; which would subject him to some expence; in which case the old rule of demanding security from the appellant, would probably come into force.

5. The question therefore is—

1st. Should an appellant be allowed if he wish it, without waiting for the petition of appeal and decree to be read over, to bring forward any additional proof to support his case?

2nd. If allowed, should the respondent be called upon to attend, or not, until the judge was able to take up the case?

790—793

10 } May, 1833.
31 }

6. May I request the favor of your procuring me the decision of the Court on this question? At the same time I may observe that I hope in a few months to have matters in such train that the appeals will be weekly cleared off.

To the Judge of Zillah Furruckabad, dated 10th May, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 30th April last.

2. In reply, I am directed to inform you that an appellant should not be allowed to bring forward additional proof in support of his claim, before the petition of appeal and decree have been read over by the judge.

3. Under this construction a reply to your second query is rendered unnecessary.

The Presidency Court, on the 7th June, 1833, concurred in this construction.

May 10th, 1833.

To the Patna Provincial Court of Appeal, dated 10th May, 1833.

No 791.
1829
Reg 11 Sec 8.

I am directed by the Court to acknowledge the receipt of your letter of the 24th ultimo, and in reply to inform you that the provisions of Section 3, Regulation II. 1833, should have effect from the date of its promulgation, i. e. its receipt by the Court; that the transfer of original suits should not be delayed for any further communication from the judicial department; and that decisions of such suits, passed by you after the date of the promulgation of the Regulation, are illegal.

The Western Court, on the 14th June, 1833, concurred in this construction.

May 10th, 1833.

To the Acting Magistrate of Cuttack, dated 17th May, 1833.

No 792.
1829
Reg I Sec 3, Cl 1

I am directed by the Court to acknowledge the receipt of your letter of the 27th ultimo, and its enclosures, requesting their sanction to the dismissal of Soobul Chunder Bose, serishtedar of your Court; and in reply to inform you that the case does not, in the opinion of the Court, call for their interference. If the alleged misconduct of the serishtedar be such as to render him deserving of dismissal from office, the evidence to that effect should be submitted to the commissioner of circuit, who is competent under Regulation I. of 1829, to pass such orders as the nature of the case may require.

May 17th, 1833.

To the Judge of Dacca Court of Appeal, dated 31st May, 1833.

No. 793.
1833
Reg 11 Sec 8.

I am directed by the Court to acknowledge the receipt of your letter of the 6th instant, requesting to be informed whether you should retain or transfer to zillah Tipperah the case of Joydoorgah Chowdrayn and others, plaintiffs, versus Mussummat

Sonammee and others, defendants, in which you have obtained the Court's permission to review the judgement passed by you.

2. In reply, I am directed to inform you that the Court viewing the case in the light of an original suit, which, by the provisions of Regulation II. 1833, you are precluded from trying, are of opinion that it should be transferred to the zillah court of Tipperah.

The Western Court, on the 28th June, 1833, concurred in this construction.

May 31st, 1833.

From the Officiating Judge of Zillah Meerut, dated 7th May, 1833.

No. 794.
1825 Reg VII Sec 3 Cl 6 Sec 4, Cl 4 and 5

Much inconvenience having been experienced, from the collectors of this division having in several instances refused to carry into effect orders which had been issued from this court for the sale of landed property, situated in their respective jurisdictions, in satisfaction of decrees, I am induced to make the matter a subject of reference, and to request the favor of your furnishing me with the sentiments of the Superior Court as to whether the power of making enquiries into, and deciding upon, the rights of claimants to property for the sale of which orders have been issued, is vested in the collector; or whether he ought, whenever such claims may be preferred to him, to forward them with any evidence which may have been adduced in support of it, or which the records of his office may enable him to supply, for the information and orders of the Court.

2. My object in making this reference is more with the view of setting at rest a question which has been, previous to my taking charge of the office, a subject of long and unprofitable discussion, without subjecting myself to prolonged correspondence with those collectors who entertain different views as regards the construction of the various enactments on the subject, and which, more specially Clause 6, Section 3, Regulation VII. 1825, and Clauses 4 and 5, Section 4 of the same Regulation, clearly vest all enquiries on the subject in the judge; the revenue officer being a ministerial officer, and having no right either to call in question the court's orders or to postpone the sale of any lands which have been ordered by the judge, without receiving specific orders from him on the subject.

To the Officiating Judge of Zillah Meerut, dated 12th June, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 7th ultimo, representing the inconvenience arising from the refusal of the collector of your division to carry into effect the orders of your court for the sale of landed property, and requesting the decision of the Court as to whether the claims advanced for property advertised for sale under orders of a court are to be decided by the collector, or by the court directing the sale.

2. In reply, I am directed to inform you that, under the provisions cited by you, such claims come exclusively within the cognizance of the court ordering the sale, and

that in the event of such claims being preferred to the collector, it is incumbent on that officer to forward them to the court for decision, staying his proceedings until the further orders of the court are received.

The Presidency Court, on the 5th July, 1833, concurred in this construction.

June 12th, 1833.

To the Judge of Zillah Burdwan, dated 14th June, 1833.

No. 795.

I am directed by the Court to acknowledge the receipt of your letter of the 21st ultimo, and in reply to inform you that petitions on the part of the defaulting putnee talookdars, whose tenures have been sold for arrears under Regulation VIII. 1819, previous to the enactment of Regulation VII. of 1832, to receive the excess of the purchase money above the amount of the balance for which the tenure was sold, should be presented to the judge who holds the surplus in deposit.

1819. Reg. VIII. Sec. 17. Cl. 7
1832. Reg. VII. Sec. 16. Cl. 1.

The Western Court, on the 19th July, 1833, concurred in this construction.

June 14th, 1833.

To the Judge of Zillah Moradabad, dated 14th June, 1833.

No. 796.

I am directed by the Court of Sudder Dewanny Adawlut for the Western Provinces to acknowledge the receipt of your letter of the 6th instant.

1831

2. In reply, I am directed to inform you that the rule laid down in Clause 3, Section 16, Regulation V. 1831, is not applicable to principal sudder ameens to whom appeals are referred by the judge.

Reg V Sec. 16. Cl. 3.

The Presidency Court, on the 5th July, 1833, concurred in this construction.

June 14th, 1833.

From the Officiating Judge of Cawnpore, dated 8th June, 1833.

No. 797.

I request you will obtain instructions for me from the Court whether suits can be entertained in the zillah courts for debts contracted in Calcutta, the obligations by which the debts are represented, such as shop bills, bonds, notes of hand, or receipts, being dated and executed in Calcutta; a great number of persons, Europeans and natives, who hold such obligations being residents of Cawnpore, and the other parties who, were suits to be instituted, would appear as defendants, being also residents or occasional visitors of Cawnpore or have available property here. Costs of suit and vakeels' fees are so high that I consider it my duty to the public to make the present enquiry, lest, after incurring great expense, parties may ultimately find themselves in the situation of being non-suited.

1793. Reg. III Sec. 8. 1803 Reg. II. Sec. 5.

2. I do myself the honor to forward two documents which an intending suitor has brought to me, and who made the enquiry orally which I have submitted above. I request

they may be returned. P. Carapit is a servant of the king of Oude, and occasionally visits Cawnpore, and is a man of wealth.

Sicca Rupees 2,900. *Calcutta, 3rd February*, 1833.

Three months after date I promise to pay to Messrs. Middleton and Co. or order the sum of Sicca Rupees two thousand and nine hundred for value received.

(Signed) P. CARAPIT.

P. CARAPIT, Esq. ..... Dr.

TO MIDDLETON AND CO.

1828. Feby. 3rd.—To a handsome large pearl necklace with diamond clasp, ... 2,200
" A pair of handsome diamond and drop earrings, ... 700

Sa. Rs. 2,900

To the Officiating Judge of Zillah Cawnpore, dated 14th June, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 8th instant.

2. In reply, I am directed to inform you that under the provisions of Section 5, Regulation II. 1803, suits of the nature described in your letter, can only be instituted in your court, where either the cause of action has arisen or the defendant resided as a fixed inhabitant at the commencement of suit in the zillah under your charge. The circumstance of the defendant being only an occasional visitor, or his merely having available property in Cawnpore, will not therefore subject him to your jurisdiction.

The Presidency Court, on the 5th July, 1833, *concurred in this construction.*

June 14th, 1833.

To the Judge of Zillah Burdwan, dated 14th June, 1833.

No. 798.
1831
Reg V sec 9, Cl 2.
1832
Reg VII Sec. 7

I am directed by the Court to acknowledge the receipt of your letter of the 21st ultimo.

2. In reply to the question contained in the 1st and 2d paragraphs, I am directed to inform you that as by Clause 2, Section 9, Regulation V. 1831, pleadings, applications for filing exhibits and for the attendance of witnesses, and copies of decrees in suits tried by moonsiffs, need not be written on stamp paper, the Court are of opinion that petitions presented to moonsiffs under Section 7, Regulation VII. 1832, for the execution of their decrees, as well as vakalut-namehs filed in cases before them, should be received on plain paper.

3. In reply to the 3d paragraph, I am directed to refer you to the accompanying extracts from a letter addressed to the Court by the judge of Beerbhoom, under date the

15th August last, and the Court's reply dated the 31st of the same month. (See Construction No. 714, page 55 of this volume.)

4 On the subject of the 4th and 5th paragraphs the Court are of opinion that moonsiffs, in common with the other judicial officers, are competent to try the fact of possession of lakeraj land attached by them in execution of their decrees.

The Western Court, on the 19th July, 1833, concurred in this construction.

June 14th, 1833.

From the Register of the Western Provinces to the Register of the Presidency Court of Nizamut Adawlut, dated 17th May, 1833.

No. 799.
1831
Reg. VI.

From the session statements of zillah Moradabad, for the month of December last, it appears that on the 11th December, 1830, five prisoners were convicted by the commissioner of the division of "maliciously wounding." This sentence was confirmed by two judges of the Presidency Nizamut Adawlut on the 26th November, 1831. Another prisoner (Dalla) was tried in December last, by the session judge of Moradabad; in the course of the trial one of the eye witnesses, upon whose deposition the former prisoners were convicted, denied his former statement, and affirmed that he did not recognize the accused as he had before asserted. He was committed for perjury, and as his present deposition throws considerable doubt on the former evidence, it has been recommended by the sessions judge that the former sentence should be revised; and it becomes necessary to decide in what court and how such a revision can be had.

2. The following general questions therefore arise:—

1st.—Whether this Court are competent to revise sentences in criminal trials passed or confirmed by the judges of the Presidency Court in cases connected with the Western Provinces.

2d.—Whether in making such a revision they are at liberty to revise with reference to the general merits of the case at large, or merely in as far as the propriety of the order passed may be affected by the new light which is thrown on the subject.

3. As the Court see great reason to doubt their authority to revise the sentences passed or confirmed by the Presidency Court, more especially while any of the judges concurring in the sentence still remain attached to that Court; they are desirous of learning the opinion of the Presidency Court on the above questions previous to adopting further measures.

To the Register of the Nizamut Adawlut Western Provinces, dated 14th June, 1833.

I am directed by the Presidency Court to acknowledge the receipt of your letter of the 17th ultimo No. 40.

2. In reply, I am directed to observe that as the jurisdiction of this Court over the province of Benares, and the ceded and conquered provinces, has ceased under Section 2, and been transferred to the Court of Nizamut Adawlut for the Western Provinces by

Sections 3 and 6 of Regulation VI. 1831, the judges are of opinion that the Western Courts possess the whole of the powers, in regard to the revision of orders and sentences passed by the Court at the presidency before the enactment of that Regulation, which could have been exercised by the latter previously to the separation of the jurisdictions.

June 14th, 1833.

To the Magistrate of Zillah Backergunge, dated 21st June, 1833.

No. 800.
Writ of assistance.

I am directed by the Court to acknowledge the receipt of your letters of the 4th, 7th and 10th instant, and their respective enclosures, requesting the Court's instructions as to the mode to be pursued by you in regard to a writ of assistance issued from the Supreme Court, in the case of Peter Jacob Paul versus John Demetrius Calogreedy and Euphrosyne his wife.

2. The Court have also had before them a letter from the sheriff of Calcutta dated the 13th instant, and a petition from Peter Jacob Paul, the plaintiff in the above case.

3. It appears from the papers before the Court that when a suit was pending in the Dacca Provincial Court, regarding the disputed succession to the estate of Alexander Panioty, Euphrosyne Calogreedy, daughter of the said Alexander Panioty, and her husband John Demetrius Calogreedy, executed an agreement making over two annas of the five and half anna share of Pergunnah Chunderdeep (the said share being considered to consist of sixteen equal parts) and a house at Burrisaul, to John Panioty and his brothers, upon which a decree was passed on the 18th January, 1828, awarding the shares of the parties accordingly. John Panioty and his brothers therefore, being in possession of the said share and house under the decree of a court of competent jurisdiction, cannot, with any justice, be ousted therefrom in the execution of the decision of the Supreme Court, passed on the 13th of July, 1832, to which they were not a party, founded on a deed of mortgage executed by Euphrosyne and her husband on the 8th of October, 1831, in favor of Peter Jacob Paul, by which the previous agreement and decree would be rendered null and void. The mortgage is indeed, apparently, a collusive transaction entered into by the parties with that intention.

4. On this view of the case the Court are of opinion that you acted judiciously in not using forcible means to oust John Panioty and his brothers from the property in their possession; and that you should confine your aid and assistance to the sheriff's bailiff to preventing any breach of the peace in the execution of his duty, leaving the mortgagee, if he sees proper, to sue John Panioty and his brothers and the mortgagers, in the zillah court, for possession of that portion of the property claimed by him which is in the possession of John Panioty and his brothers under the decree of the Provincial Court.

June 21st, 1833.

To the Judge of Zillah Juanpoor, dated 5th July, 1833.

No. 801.

I am directed by the Court to acknowledge the receipt of your letter of the 20th ultimo.

1831. Reg V Secs 5, 15 and 18.

2. In reply, I am directed to inform you that under the existing regulations, cases in which a collector is a party, cannot be referred for decision to the native judicial officers.*

The Presidency Court, on the 2d August, 1833, *concurred in this construction.*

July 5th, 1833.

To the Judge of Zillah Bareilly, dated 5th July, 1833.

No. 802.

In reply, I am directed to inform you that as the wukeels of the principal sudder ameen's and sudder ameen's courts are in fact wukeels of the judge's court, permitted by the judge under the provisions of Section 72, Regulation XXIII. 1814, and Clause 3, Section 18, Regulation V. 1831, to practise in cases before the subordinate tribunals, and as by the Section and Regulation first cited, the whole of the Regulations in force regarding the authorized wukeels of the zillah courts are applicable to the authorized wukeels employed in the courts of the sudder ameens, the wukeels of the sudder ameen's and principal sudder ameen's courts are equally competent with other wukeels of the zillah and city courts to claim fees for furnishing legal opinions on points of law, or in particular cases, which may be referred to them by the parties interested.

1814. Reg XXIII. Sec. 72. Reg XXVII. Sec. 20. 1831 Reg. V Sec. 18, Cl. 3.

The Presidency Court, on the 2d August, 1833, *concurred in this construction.*

July 5th, 1833.

From the Session Judge of Zillah Rungpore, dated 17th June, 1833.

No. 803.

The absence of ownership in the thing stolen does not affect the guilt of the thief.

In this case the prisoner (charged with stealing a bull) was found guilty by the jury of having the property with intent to conceal and make away with it. They recorded their opinion, that the case did not amount to theft, in which opinion I concur, but at the magistrate's request (having previously offered to refer if he asked it) I have the honor to submit the case.

2. The bull had been dedicated to religion, and was let loose by the owner to devour other people's crops; and to commit any other mischief. Under these circumstances, the prisoner seems to have thought that it would be an advantage both to himself and the public if he abated the nuisance; accordingly he carried off the bull, and was taken up in the attempt to dispose of it at a market. As there is no ownership in any body, and as the animal was not in custody or keeping, either express or implied, the charge, I conceive, cannot be sustained. Herewith I enclose copy of the futwa, which I took to assist my own judgment.

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* The state of the law regarding Principal Sudder Ameens and Sudder Ameens has since been altered by Act No. XI. 1836.

To the Session Judge of Zillah Rungpoor, dated 5th July, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 17th ultimo, submitting a question arising out of a case of theft of a brahminy bull.

2. As the case in question is within your competency, the Court request that you will dispose of it in the usual manner. They at the same time direct me to observe that the fact of there being no ownership in any individual, does not affect the criminality of the person who is alleged to have taken the bull, which must depend altogether on the *animus* by which he was actuated.

July 5th, 1833.

From the Judge of Zillah Goruckpore to the Register of the Western Provinces, dated 6th July, 1833.

No. 804.

1831
Reg IX Sec 2, Cl. 2 and 4.
1832.
Reg. VII Sec. 15.

Tirbenee Dutt, petitioner, in the case.
Rambuksh Rae, plaintiff,
versus
Omrao Puttuk, defendant.

I have the honor to acknowledge the receipt of a precept from the Court of Sudder Dewanny Adawlut for the Western Provinces, dated 11th May, in the case noted in the margin, with a copy of the Court's order in the said case.

2. To the orders of the Court in the case above noted, I beg respectfully to make the following objections.

3. The order in question was passed by a single judge of the court, merely upon the petition of the appellant, without a revision of the proceedings of the case The purport of the order is to reverse the decision of the zillah judge; to direct that an auction sale which had been held in accordance therewith should be upset, and that evidence be taken as to the truth of a statement, made by the appealing petitioner, styling himself the son of the defendant in the case.

4. The case is briefly this,—Rambuksh Rae, plaintiff, brought a suit against Omrao Puttuk, defendant, to recover the sum of 1058 rupees and 3 annas, principal and interest, being money advanced by the plaintiff to the defendant in a certain transaction. On the 25th April, 1831, a decree was passed in favor of the plaintiff upon a full investigation of the merits of the case for the full amount claimed in the plaint. From this decision no appeal was instituted.

5. On the 24th August, 1831, execution was sued out by the plaintiff. The defendant absconded. On the 22d December, 1831, the plaintiff petitioned for a sale of the defendant's property, which being complied with and the regular forms observed, three villages were advertised for sale on the 21st February, 1833. On the 29th December, 1832, a man named Tirbenee Dutt, stating himself to be a son of the absent defendant, without any power of attorney or authority to act on defendant's behalf, presented a petition, stating that subsequently to the afore-mentioned decree the plaintiff had made an arrangement with defendant; that he had received a certain portion of his claim, for which he had given a receipt; that a further portion he had received in presence of witnesses, promising to make over to him the decree, and that the remaining portion he, plaintiff, had voluntarily

excused the defendant. When this petition was read on the 3d January, 1833, by the acting judge, the receipt was examined and an order was issued to the nazir to produce the plaintiff that he might reply aye or no to its correctness. An order was at the same time sent to the collector to stay the auction pending the plaintiff's arrival. On the 12th February, 1833, the nazir made his return, and the plaintiff appeared before me. The plaintiff denied entirely the correctness of this, Tirbenee Dutt's statement, and the authenticity of the document purporting to be a receipt for 1,000 rupees granted by one Muhesh Rae, said to be plaintiff's son, to the aforesaid Tirbenee Dutt; the defendant in the case Omrao Puttuk never appearing. In consideration of the plaintiff's denial and of all the circumstances of the case I recorded my opinion that the validity of Muhesh Rae's receipt and other objections advanced by Tirbenee Dutt, could not be investigated in a more process of execution of a decree obtained by Rambuksh Rae against Omrao Puttuk; and I therefore directed that the execution should proceed and the sale should take place, which it accordingly did.

6. Now my objections to the order described in the 3rd paragraph of this letter are three-fold:

First.—Clause 2, Section 2, Regulation IX. 1831, is, I believe, the only enactment which can be at all considered as giving legality to the order. In the said Clause there are two divisions; the former pointing out the authority of a single judge of the Sudder Dewanny Adawlut summarily to confirm the orders of the lower court: the latter stating the authority of that officer, in the event of his disapproving of the lower court's decision or order. I respectfully maintain that in the latter case no authority is given to the single judge to pass any order at all with regard to the decision without a revision of the whole of the proceedings of the case.

Secondly.—Supposing the single judge to have authority to pursue the course mentioned in the aforesaid division and clause without calling for the papers and revising the case, I would respectfully ask what is the course mentioned? What is the single judge competent to do? The enactment says, "It shall be competent to a single "judge to *issue an injunction* pointing out the irregularity, illegality or other defect "apparent in the proceedings, decision or order appealed against, and requiring that the "court by which the same may have been held or passed *shall revise the* case, and proceed "thereon in such manner as may appear conformable to justice and the regulations." Certainly to my mind no authority is here given to the single judge summarily to *reverse* the decision of the zillah judge, and to upset an auction sale under which a valuable estate has changed hands, and in the validity of which decision the interests of many are concerned.

But, *thirdly*, I submit that this case does not come under Clause 2 of the Section at all. The order against which the petitioner complained was recorded in execution of a decree passed in a regular suit, after a full investigation of its merits. After having ascertained the exact nature of the statement made by the petitioner, after having examined his documents and taken the statement of the decree holder in the matter, I recorded

my opinion that, *as a point of law and practice*, the petitioner's claim could not be investigated in a mere process of executing a decree to which he did not on the record appear to be a party. The case I submit comes strictly under Clause 4 of the Section and Regulation quoted above, with regard to which the enactment expressly states that "it shall "not be competent to a single judge to alter or reverse such decree or order."

7. I respectfully beg the opinion of the Court in full sitting on the points at issue.

8. The Court will perceive that I have referred the matter merely on the question of jurisdiction, without entering into any arguments in support of my view of its merits. If the Court shall decide that my opinion, as recorded in the order appealed against, is wrong; that a third party may, in the execution of a decree in a case finally settled, come in, and, on a miscellaneous petition, on a paper bearing a rupee stamp, claim to have his demand against the son of the decree holder investigated—which investigation is to involve the examination of evidence to a number of different points (as in this case to the three distinct points described in the petition, 1st, the validity of a receipt for 1,000 rupees, 2nd, the fact of a further sum having been given in the presence of other witnesses, and 3rd, that the decree holder had, before yet other witnesses, waived all claim to a sum due from defendant to him); and that such petitioner shall be entitled to have his case investigated summarily pending the execution of the other party's decree, it will be a decision of some importance as a precedent for future practice.

From the Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 19th July, 1833.

I am directed by the Court to transmit, for the purpose of being laid before the judges of the Presidency Court, the annexed copy of a letter received from the judge of zillah Goruckpore under date the 6th instant.

2. It is the intention of the judge of the Court, with whom the order alluded to by Mr. Currie originated, to revise his proceedings in the case; but the general question, as to the authority of a single judge of the Sudder Dewanny Adawlut to alter or reverse the proceedings of the zillah court in cases of this nature, still remains to be decided.

3. The Court view the order of the zillah judge which was reversed in this case as a proceeding in execution of a decree of his own court in an original suit; and they are therefore of opinion that the order in question does not come within the exception laid down in Clause 4, Section 2, Regulation IX. 1831, as supposed by the zillah judge (see paragraph 6 of his letter), and that a single judge of the Sudder Dewanny Adawlut was competent, under the provisions of Section 15, Regulation VII. 1832, to modify or reverse that order as might appear to him advisable.*

The Presidency Court, on the 16th August, 1833, *concurred in this construction.*

July 19th, 1833.

* See a further letter on this subject, No. 839 of this volume.

19 July, 2 August, 1833.

Resolution of the Presidency Court of Sudder Dewanny Adawlut, under date the 19th July, 1833.

The following question having been put to the Court—

No. 805.

1814 Reg XXVI. Sec 3, Cl. 9.

Adverting to Clauses 2 and 9, Section 3, Regulation XXVI. 1814, with reference to Section 18 of Regulation V. 1793, Section 8, Regulation XIII. 1803, (and to Section 8, Regulation II. 1801, and Section 11, Regulation II. 1805, rescinded by Clause 1, Section 3, Regulation XXVI. 1814,) and also to the provisions of Regulation IX. 1831, —is the ground for receiving and acting upon a summary appeal simply the dismissal of the suit, or refusal to admit the suit, *without investigation of the merits, on the default of the parties,* or will the dismissal of the suit, or the refusal to admit it without an investigation of the merits, *without default of the parties,* be considered sufficient to justify the Sudder Dewanny Adawlut in receiving and acting on a summary appeal? In other words, if no default has been shewn, and if there has been any investigation in the Lower Court, however insufficient or imperfect, will such investigation bar the interference of the Superior Court in a summary form?

The Court are of opinion that a summary appeal can be admitted *only* when the suit has been dismissed or rejected on the ground of delay, informality or other default, without an investigation of its merits—and that the words *or in opposition to the Regulations* used in Clause 9, Section 3, Regulation XXVI. 1814, apply to cases which may have been so dismissed or rejected on grounds not warranted by the Regulations, or to the omission, prior to the dismission or rejection of the suit, of any of the forms prescribed by the Regulations for calling on the party to attend and shew cause why his suit should not be dismissed, &c.

The Western Court, on the 6th September, 1833, *concurred in this construction.*

July 19th, 1833.

To the Judge of Zillah Furruckabad, dated 26th July, 1833.

No. 806.

Illegitimate children are considered as of the same country as their mothers.

I am directed by the Court to acknowledge the receipt of your letter of the 19th instant.

2. In reply to your 3d paragraph, I am directed to inform you that illegitimate children should be classed with their mothers, and must be considered British subjects, European Foreigners, or American, according as their mothers may respectively be British, Foreign European, or American.

The Presidency Court, on the 6th September, 1833, *concurred in this construction.*

July 26th, 1833.

To the Judge of Zillah Midnapoor, dated 2d August, 1833.

No. 807.

1793. Reg III Sec. 7. 1803. Reg II. Sec. 4.

I am directed by the Court to acknowledge the receipt of your letter of the 15th ultimo, requesting to be informed what mode of procedure you should adopt in receiving and trying two suits instituted for the recovery of sums said to have been taken as bribes by the serishtadar of the collector's office.

2. In reply, I am directed to inform you that you should proceed in the same manner as in common actions for debt. Section 7, Regulation III. 1793, declares all natives amenable to the civil courts, and as no Regulation exempts the officers of collectors from their jurisdiction, they come within the intent of the rule.

The Western Court, on the 6th September, 1833, *concurred in this construction.*

August 2d, 1833.

From the Judge of Zillah Mynpooree, dated 15th July, 1833.

No. 808.

1793. Reg XIV. Secs 15, 19 and 21. 1803 Reg XXVII. Secs. 23, 26 and 28

Concluding that the construction on Section 23, Regulation XXVII. 1803, communicated by the register of the Presidency Court in a letter dated 27th May, 1825, addressed to the judge of Bundlecund S. division, (No. 386, page 159, Vol. I, of the Book of Constructions,) is equally applicable to suits instituted against farmers and securities under Sections 26 and 28 of that enactment, I request to be informed whether in cases under the last Section, the amount of fine claimed by the collector on the part of Government ought not to be specified in the plaint; otherwise I see no way of estimating the value of the suit until a final decision is passed, and the judge has no opportunity of hearing evidence on the part of Government as to the circumstances of the defendant, and the defendant, not knowing the amount claimed from him, has no opportunity given him either of acquiescing in his ability to pay it, or of adducing evidence in disproof thereof.

To the Judge of Zillah Mynpooree, dated 2d August, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 15th ultimo, regarding suits instituted against farmers and securities under Sections 26 and 28, Regulation XXVII. 1803.

2. In reply, I am directed to inform you that the former construction of the Presidency Court is applicable to suits instituted against farmers and their securities under Sections 26 and 28 of the Regulation above mentioned, that is, the proceedings must be written on stamped paper, the amount of which will be determined by the jumma of the estate from which the arrear of revenue is due.

3. It is of course beyond the power of the collector to specify any amount of fine claimed by the Government from a security, as in fact no such claim is advanced: the collector merely represents the circumstances of the resistance of process to the zillah court, and the amount of the fine is left to the discretion of that court on the fact being established to its satisfaction.

The Presidency Court, on the 30th August, 1833, *concurred in this construction.*

August 2d, 1833.

No. 809.

One proved act of gross misconduct in a mookteer justifies his general rejection.

To the Joint Magistrate of Malda, dated 2d August, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 19th ultimo, requesting to be informed, with reference to my letter of the 18th November,

1831, (No. 607, page 252, Vol. I.) when joint magistrate of Bograh, whether the prohibition against the employment of a mooktear convicted of gross misconduct is to be confined to the case in which his misconduct has been brought to light; and in reply to inform you that one proved act of gross misconduct is sufficient to warrant a general rejection of the mooktear.

The Western Court, on the 6th September, 1833, *concurred in this construction.*

2d August, 1833.

To the Judge of Zillah Mymensingh, dated 2d August, 1833.

No. 810.
1814
Reg. XXVI Sec. 4, Cl. 2 and 4.

The Court, having had before them the case of Bhyrub Chunder Doss, petitioner, versus Kishen Madho, decided by you in appeal on the 12th December, 1832, direct me to communicate to you the following observations and orders.

2. It appears that the petitioner obtained a decision in his favor from the pundit sudder ameen on the 26th July, 1810, which was confirmed in appeal by the register on the 17th June, 1816; and that the judge, on the 16th July following, rejected a petition filed by Kishen Madho for a special appeal from the register's decree.

3. As under the regulations the rejection of an application for a special appeal is final, the whole of the orders subsequently passed in the case are illegal. If you are of opinion that there are grounds for admitting a special appeal from the decision of the register, you should apply to this Court for permission to review the order of the former judge of the 16th July, 1816.

4. The Court accordingly annul the order passed by you on the 12th December last, with all other orders passed by any other authority subsequently to the 16th July, 1816, and request that you will proceed in the manner above prescribed.

5. The Court further direct me to observe that the Court's proposition contained in their roobukaree in this case dated the 11th July, 1828, and in the register's letter of the same date, that Kishen Madho should solicit the register of the zillah court to apply for a review appears to have been erroneous as under the construction of Clause 2, Section 4, Regulation XXVI. 1814, (No. 216, page 69, Vol. I.) the Court are not authorized by the Regulations to empower a register to review his decisions.

The Western Court, on the 20th September, 1833, *concurred in this construction.*

August 2d, 1833.

From the Judge of Zillah Jessore to the Register of the Presidency Court of Nizamut Adawlut, dated 15th July, 1832.

No. 811.
1829
Reg. X Sec. 17, and Sch. B Art. 8.
1831.
Reg. V. Sec. 5, Cl. 3.

For the consideration and orders of your Court I submit copy of a petition presented by Ramtonoo Pal, and beg to be informed whether with reference to the Regulations noted in the margin, a moonsiff is empowered to try so important a case as that alluded to by the petitioner. Ramtonoo states that hitherto he has never paid more than 32 rupees per annum, whereas you will observe, the zemindar, Roy

Regulation V. of 1831, Section 5, Clause 3
Regulation X of 1829, Section 17, Schedule B. No. 8.

Gungadhur, claims 206 rupees 12 annas, in other words he demands (supposing the petitioner's account to be true) an increased yearly income of rupees 175 in perpetuity equivalent to a principal sum of rupees 1,500, or 2,000, calculating at the rates of interest current in Bengal. My own opinion is that suits of this value should be referred for trial to the principal sudder ameens; but without instructions I do not like to act on the impression, because by long custom such claims have been invariably calculated at one year's rental only, in this court, and I believe in all. As respects the stamp duties the practice is not perhaps objectionable, since the exact amount of the jumma can only be ascertained by a measurement and assessment of the lands in dispute, i. e. should it appear on investigation that the zemindar is entitled to a fresh settlement. It is different, however, with regard to the interests of the ryots or other subordinate tenants, and it seems to me that they should have the advantage of a principal sudder ameen's superior intelligence and experience in trying such questions, whenever the increased rental claimed may exceed 36 rupees per annum.

To the Judge of Zillah Jessore, dated 2d August, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 15th ultimo, and in reply to inform you that the suit alluded to by you, being for a sum of money not exceeding 300 rupees, is cognizable by the moonsiff under Clause 2, Section 5, Regulation V. 1831.

2. The Court do not approve of the suggestion contained in the concluding part of your letter as a general rule, but observe that you are competent, in the particular case in question, to refer the suit to the principal sudder ameen under Section 7 of the Regulation above quoted.

August 2d, 1833.

From the Officiating Commissioner of Circuit 10th Division, dated 24th July, 1833.

No. 812.
1812.
Reg. XX. Sec. 7.

I have the honor to report, for the information of the Court of Sudder Dewanny Adawlut, that on the occasion of my late circuit in this division, I inspected the registers books of deeds in the zillahs of Sarun, Shahabad and Tirhoot. In the two former, they appeared to be kept up in conformity with the Regulations.

2. At Tirhoot the practice of registering mooktearnamahs still prevailed, an irregularity noticed in my letter to your address under date the 24th of September, 1831. I requested the judge to call for, from the register, and furnish an explanation of the continuance of this practice after the illegality had been pointed out, as stated in my letter above alluded to, and I have now the honor to submit a copy of the reply of the register of deeds, which perhaps will be deemed satisfactory by the Sudder Court.

3. I deem it incumbent on me at the same time to notice a practice that prevails in Tirhoot, which I conceive to be infinitely more objectionable, and of the legality of which I am doubtful, viz. that of registering deeds called, or rather miscalled, ijaranamahs,

(اجارہ نامہ) in a separate book kept for the purpose. The nature of the deeds I cannot better explain than by the following quotation of the purport of the last deed registered. "Meer Muttoonh, aged about 26, binds himself over for the period of 85 years, "and his descendants for ever (سلا بعد نسل بطا بعد بطن) for the sum of 18 rupees, to "Omrao Sing, vakeel of the civil court at Tirhoot."

4. In another, a person disposes of the services of the slave girl, and of her children for a term of 81 years, for the sum of 200 rupees; and the rest were generally of a similar purport.

5. My object in now noticing these deeds, is to obtain the opinion of the Court of Sudder Dewanny Adawlut as to the legality of such transactions being registered under Regulation XX. of 1812, or any other law enacted for the guidance of the register of deeds.

6. In my general report to Government I purpose commenting on the policy of any longer openly supporting, by the records and decisions of our courts, a monstrous system of slavery, perhaps the only relic of the barbaric operation of Mahomedan law, which has not been either modified or superseded by our more mild and civilized code.

To the Officiating Commissioner of Circuit for the 10th Division, dated 16th August, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 24th ultimo, reporting that you had examined the books of the offices of register of deeds in the districts of Sarun, Shahabad and Tirhoot, on the occasion of your late circuit of the division.

2. In reply, I am directed to observe that as deeds of the description alluded to in your letter are not specified in Regulation XXXVI. of 1793, or Regulation XX. of 1812, the registry of them is illegal under the prohibition contained in Section 7 of the Regulation last quoted; and to request that you will communicate this opinion to the judge of Tirhoot for the information and guidance of the register of deeds.

August 16th, 1833.

From the Judge of Zillah Purneah, dated 24th July, 1833.

No. 813.
1793
Reg III Sec 14.
1803
Reg II. Sec. 16, Cl 3.

I have the honor to request the favor of your obtaining for me the opinion of the Court of Sudder Dewanny Adawlut on the points noticed below, regarding the rule of limitation laid down in Section 14, Regulation III. 1793.

2. A person lent another a sum of money. Before repayment of the debt the debtor dies, leaving as his heirs, a widow, daughter, mother, and paternal uncle's son, who inherit his property. The landed property however, in consequence of disputes in the family, is attached by the court under Section 16, Regulation V. 1812. The creditor, before the expiration of twelve years from the period of the cause of action, applies by a miscellaneous petition to the court, requesting that the person in charge of the property of the deceased debtor may be directed to discharge the debt from the proceeds of the estate. The court call upon the heirs of the deceased to know if they admit the debt, or have any objections to payment being made as requested. The cousin admits it, but

the *mother, widow* and *daughter* make *no reply*. The creditor then, some time *after* the expiration of twelve years, brings his action for recovery. I beg to be informed, first, whether under the express provisions of the enactment above quoted, the admission of the claim by the cousin can be considered as an admission of the truth of the demand by the defendant, so as to bind the whole of the heirs of the deceased debtor; and secondly, whether a miscellaneous application to a court of justice can be considered as a preferring of the claim within the meaning of the Section quoted.

To the Judge of Zillah Purneah, dated 16th August, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 24th ultimo.

2. As the case, out of which your first question arises, may come judicially before the Court, they decline giving any opinion on it, and desire that you will decide the point on your own judgment.

3. In reply to the second question I am desired to communicate to you the opinion of the Court, that a miscellaneous application to a court of justice cannot be considered as a "preferring of the claim" within the meaning of Section 14, Regulation III. 1793.

The Western Court, on the 6th September, 1833, concurred in this construction.

August 16th, 1833.

From the Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 23d August, 1833.

No. 814.
1833.
Reg II. Sec. 5

The point of law below laid down, having arisen in a case now pending before this Court, I am directed to request that you will submit the same for the opinion of the judges of the Presidency Court.

2. In this Court's resolution of the 27th April, 1832, in which the Presidency Court have since expressed their concurrence, it has been already determined that "the "Courts of Sudder Dewanny Adawlut cannot interfere on the receipt of petitions of "appeal against the decision of a zillah or city judge passed by the latter in appeal from "the decisions of sudder ameens and moonsiffs, and that this construction applies to cases "in which the decision of the zillah or city judge has been passed prior to the operation "of Regulation V. 1831, in the district in which the cause of action originated, as "well as to those passed subsequently."—(See Construction No. 688, page 41 of this volume.)

3. The question has now arisen whether by a parity of reasoning the Courts of Sudder Dewanny Adawlut are also precluded from taking up and acting on petitions of special appeal from the decisions of zillah and city judges, which had been presented and were lying undisposed of before the provincial courts at the time of their abolition, and have been transferred to the Sudder Dewanny Adawlut under the provisions of Regulation II. 1833.

4. The Court are of opinion that such petitions are cognizable by the Courts of Sudder Dewanny Adawlut under Section 5, Regulation II. 1833; and that those Courts are competent to admit or reject such special appeal, according as it may appear to them advisable in each case under the general regulations.

5. Should the Presidency Court concur in this interpretation of the law, it will be adopted in the Western Provinces as a future rule of practice.

The Presidency Court, on the 27th September, 1833, concurred in this construction.

August 23d, 1833.

To the Judge of Zillah Goruckpore, dated 23d August, 1833.

No. 615.
1814.
Reg XXIII Sec. 7, Cl. 1, 2, 3, 4 and 6.
1831.
Reg. V

I am directed by the Court to acknowledge the receipt of your letter of the 15th instant, requesting the opinion of the Court regarding the applicability of Clauses 1, 2, 3, 4 and 6, Section 76, Regulation XXIII. 1814, to principal sudder ameens.

2. In reply, I am directed to inform you that although the Clauses in question are not expressly declared applicable to principal sudder ameens, the Court are of opinion that under the general spirit of Regulation V. 1831, they should be considered applicable to those officers in common with other sudder ameens.

The Presidency Court, on the 1st November, 1833, concurred in this construction.

August 23d, 1833.

From the Register of the Western Provinces to the Register of the Presidency Court, dated 23d August, 1833.

No. 616.
Magistrates are competent to remove chowdrees of trades and professions.

I am directed by the Court to transmit, for the purpose of being laid before the judges of the Presidency Court, the annexed copy of a letter from the commissioner of the 6th division regarding the authority of magistrates to remove the chowdrees of the various trades and professions.

2. The Court observe that although there is no regulation expressly authorizing the magistrates to exercise the power in question, it has nevertheless been the universal practice for them to exercise it; and they do not now see any sufficient reason for checking the practice. Should therefore the Presidency Court concur, they will communicate this opinion to the commissioner.

The Presidency Court, on the 27th September, 1833, concurred in this construction.

August 23d, 1833.

From the Acting Magistrate of Cuttack, dated 3d August, 1833.

No. 617.
1793
Reg IX Sec 5
1793
Reg. VI. Sec. 5.

I request to be instructed by the Superior Court, whether it would be a legal proceeding in me as magistrate, to try a case of bribery of a darogah in the salt department,

on the evidence taken before me on oath as salt agent, without summoning the prosecutor and witnesses again, and taking the whole of the depositions *de novo*.

The latter course would in the case which gives rise to this reference occasion considerable hardship to a number of individuals, who came from a distance to give their evidence before me as salt agent, and whom I was obliged to allow to return to their homes pending the preliminary investigation held by me in that capacity; and as exactly the same process would have again to be gone through, I would hope that, having conducted it myself in the first instance, I need only now as magistrate authenticate it.

To the Acting Magistrate of Cuttack, dated 23d August, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 3d instant, and in reply to inform you, that you are not competent as magistrate to try a case of bribery of a salt darogah on the evidence taken before you as salt agent.

August 23d, 1833.

To the Commissioner of Circuit, 13th Division, dated 23d August, 1833.

No. 818.
Correspondence with appellants in criminal cases.

I am directed by the Court to forward to you the accompanying copy of a letter from the officiating joint magistrate of Pubna, dated the 9th instant, on the subject of certain correspondence arising out of complaints preferred against him to you by Mr. Simson, an indigo planter in his district.

2. The Court are of opinion that you did not act judiciously in communicating by letter with Mr. Simson, and furnishing him with copies of the joint magistrate's explanations. Although correspondence with parties in criminal matters is not specifically prohibited by any regulation, the mode pointed out by the regulations for appealing from the orders of a magistrate to superior authority is clearly opposed to such a practice, which, if encouraged, independently of the appearance of placing the appellant and the magistrate on an equal footing, would lead, as it has done in the present instance, to a great deal of irrelevant and useless discussion.

3. The proper course for you to have pursued on the occasion, in the opinion of the Court, would have been to require Mr. Simson to make his application on the stamp paper prescribed by the Regulations; and, after calling on the joint magistrate for any explanation of his proceedings which might appear necessary, you should have proceeded to determine the question at issue, leaving the appellant to apply in the usual manner for copies of any papers connected with the case which he might wish to have.

August 23d, 1833.

From the Register of the Western Provinces to the Register of the Presidency Court of Nizamut Adawlut, dated 26th July, 1833.

No. 819.
1831
Regs. VI. and IX.

I am directed by the Court to acknowledge the receipt of your letter of the 14th ultimo, (see construction No. 799, page 107 of this volume,) stating the opinion of the

Presidency Court with regard to the authority of this Court to revise orders passed by judges of the Presidency Court, in criminal trials.

2. In your letter it is merely stated that in the opinion of the Presidency Court, the Western Nizamut Adawlut possess the same powers in such matters, as were vested in the Presidency Nizamut Adawlut previous to the separation of the jurisdictions; as it appears, however, necessary to define the nature of those powers, the Court have directed me to transmit the following resolutions recorded under this date; these resolutions are grounded chiefly on Section 17, Regulation XXV. 1814, the concluding clause of which appears to recognize the authority of the full Court of Nizamut Adawlut to revise the proceedings of any of its members; a power which is the more necessary to insure uniformity of decision under the late regulations which have so greatly extended the authority of single judges of the Court; it is also requisite that the point of authority to revise should be at once settled in order to enable the Court to dispose of the case of Surrubjeet and others in which the legality of the former sentence has been called in question. Should the Presidency Court concur in the opinion therein expressed, the Court will adopt them as their guide on future occasions.

3. As connected with the subject under discussion the Court request you will call the attention of the Presidency Court to the minutes recorded in the case of "Kumul Mussalchee," page 472, volume II. Nizamut Reports.

Resolution of the Court of Nizamut Adawlut for the Western Provinces, under date the 12th July, 1833.

1. That the judges of the Nizamut Adawlut, Western Provinces, are competent, whenever it may appear to them advisable on the representation either of one of their own body or any other constituted criminal authority, to revise in full Court the proceedings of any one or more judges in any case connected with districts under their jurisdiction, as well as to modify or annul the sentence or order previously passed, either on the grounds of additional evidence or other circumstance throwing a new light on the case, or generally with reference to the previous decision; provided that no sentence passed in a criminal trial can be modified to the prejudice of the prisoner or prisoners included in it.

2. That this power may be exercised, whether the original sentence or order was passed by former judges of the Western Court, or by any of the judges of the Presidency Court of Nizamut Adawlut.

3. If the judge or one of the judges, who passed the original sentence or order be present, the revision should be made by him; provided, that if two or more judges concurred in the sentence or order, and any one of those judges be not present, the case must be brought before the whole Court, if it be proposed to modify or annul the sentence or order passed in it.

To the Register of the Court of Nizamut Adawlut, Western Provinces, dated 23d August, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 26th ultimo, forwarding a copy of resolutions which the Western Court propose to adopt, if

concurred in by the Presidency Court, regarding the authority of the Nizamut Adawlut to revise orders passed on criminal trials.

2. In reply, I am directed to observe that the first paragraph of the resolution would appear to require that not only the revision of a criminal case should be sanctioned, but that it should also be made by a full Court, and the Presidency Court are disposed to think it would be better to confine the first paragraph to declaring the competency of the Court collectively to authorize the revision, leaving the case to be revised either by one or more judges in the manner provided for by the 2d and 3d paragraphs.

August 23*d*, 1833.

To the Commissioner of Circuit for the 12*th Division, dated* 23*d August*, 1833.

No. 820
C O N A
5th Dec 1828
1801
Reg III

The Court have had before them a letter from the joint magistrate of Malda, dated the 9th instant, (copy of which is herewith forwarded,) and its enclosures, on the subject of the case of perjury struck out of the calendar, and concur in the opinion expressed by you regarding it. While the case under Regulation XV. of 1824 was pending before the joint magistrate, he might have made the commitment for forgery or uttering forged deeds. But as he referred the investigation of that point to the civil court, and as the sudder amoon who decided the civil case did not take any notice of the alleged forgery, it was clearly not competent to the joint magistrate, under the Circular Order of the 5th December, 1828, (No. 14, page 16, volume II. Baptist Mission Press edition,) to make the commitment, especially as the case was then pending in appeal before the judge.

3. I am at the same time directed to state that the Court being of opinion that the document, which forms the ground of the joint magistrate's reference, bears palpable marks of forgery, request that you will direct the joint magistrate to inform the parties before him that they are at liberty to apply to the civil judge who decided the case in appeal, for permission to prosecute before the criminal court, which permission the judge, with reference to the concluding part of the Circular Order of the 5th December, 1828, on an inspection of the document and a comparison of its date with that of the water mark, will doubtless grant. You will also be pleased to direct the joint magistrate to furnish the parties with a copy of this letter, to produce before the civil judge.

August 23*d*, 1833.

From the Judge of Zillah Purneah, dated 12*th August*, 1833.

No. 821.
1814
Reg X XVIII Sec. 5.

I have the honor to request the opinion of the Court of Sudder Dewanny Adawlut whether it is competent for a judge under the provisions of Regulation XXVIII. 1814, to reject an application to be allowed to sue *in formâ pauperis* when on the face of the petition it shall appear that the action cannot by any possibility be legally sustained; or

whether the judge must of necessity confine himself to the mere investigation of the ability or otherwise of the applicant to pay the costs of suit.

2. I make this application to the Court with reference to two petitions that have been presented to me: one is an application to be allowed to sue *in formâ pauperis* for recovery of a debt on bond, the cause of action having arisen more than twelve years ago, and therefore the suit is barred by the rule of limitations. In the second case a Musselman woman applies to sue as a pauper for right and possession of certain lands which she asserts in her petition are endowed. Now, *I believe*, by the Mahomedan law a woman cannot be vested with the Towleeut or management of such lands, and as for proprietary right she can have none; the only thing she can be entitled to being a share of the produce.

3. Should it be necessary for the judge to confine himself to the investigation of the ability or otherwise of the applicant to pay costs, I beg to be favored with the Court's opinion whether, on the petition of plaint being filed, the defendants might not be permitted to demur summarily on the ground of the illegality of the claim, or exaggerated valuation of the property claimed, before being called upon to deposit the whole amount of pleader's fees or incur the expenses of a regular suit. Should the points adverted to be decided in the plaintiff's favor, the investigation into the merits of the case might then be proceeded with. On the other hand the plaintiff might be nonsuited, and if requisite directed to frame his plaint correctly, and sue again.

To the Judge of Zillah Purneah, dated 30th August, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 12th instant, and in reply to inform you that in applications for permission to sue *in formâ pauperis* the judge should confine himself to the investigation of the ability or otherwise of the applicant to pay the fees required; and that, with reference to Section 5, Regulation IV. 1793, which prohibits the admission of any pleadings whatever, but those therein specified, the objections of the defendant to the plaintiff's statement of the cause of action cannot be heard summarily; but should, by analogy to the cases contemplated in Section 5, Regulation XIII. 1808, be offered *in answer to the plaint* in the first instance.

The Western Court, on the 20th September, 1833, *concurred in this construction.*

August 30th, 1833.

To the Session Judge of Zillah Hooghly, dated 30th August, 1833.

No. 822.
1831
Reg VII Sec 2
C O N A 11th Feb.
1825.

I am directed by the Court to acknowledge the receipt of your letter of the 20th instant, and in reply to inform you that the Court consider you competent, under Section 2, Regulation VII. 1831, to dispose of the cases of insane prisoners agreeably to the rules contained in the 4th paragraph of the Circular Order of 11th February, 1825, the disposal of such cases being one of "the duties of the sessions."

The Western Court, on the 20th September, 1833, *concurred in this construction.*

August 30th, 1833.

To the Session Judge of Zillah Hooghly, dated 30th August, 1833.

No. 823.

1818 Reg VIII Sec. 2, Cl 2. 1831 Reg VII. Sec 2.

I am directed by the Court to acknowledge the receipt of your letter of the 16th instant, and in reply to inform you that they are of opinion that you are competent, under the provisions of Section 2, Regulation VII. 1831, to require persons acquitted by you of the specific charge on which they may have been tried, to furnish security for their good behaviour, on proof that they are notorious robbers of desperate character whom it would be dangerous to release without such security.

The Western Court, on the 4th October, 1833, *concurred in this construction.*

August 30th, 1833.

From the Judge of Zillah Rajeshahye, dated 10th August, 1833.

No. 824.

C. O. S. D A 25 Feb 1820 1814. Reg XXIII Sec. 52. 1817 Reg XVIII. Sec 7, Cl. 3.

From the Court's circular letter of the 25th February, 1820, enclosing copies of a letter addressed by the Court to Government, dated 7th January, 1820, and of a letter addressed to the Court in reply, dated 14th February, 1820, regarding the disposal of the unclaimed property of persons dying intestate, and authorizing the levy of a commission of one anna per rupee on the proceeds of such property when sold, as a remuneration to the nazir, it appears that the commission abovementioned is sanctioned on the sale of "*lawarisee*" property alone; and I request to know if a judge has any authority to allow the above commission to the nazir on the following items, viz. sale of the property by the nazir of deceased persons, (not intestate,) as for instance in the case of the late Mr. G. Coombe, an indigo planter, whose property was sold here by the nazir, and the money remitted to the administrator of his will in Calcutta; 2ndly, on property sold by the nazir in liquidation of decree of court; 3rdly, on property sold by the nazir in satisfaction of sums embezzled by any public officer.

2. I cannot find any *Regulation* authorizing the commission to be paid to the nazir in the above cases, and the sanction for receiving it on the sale of "*lawarisee*" property is only contained in a *letter* from Government; but I think as the moonsiffs are entitled to receive the commission of one anna per rupee on the proceeds of sale, that the nazir might also with propriety be allowed the same on every sale he should conduct.

To the Judge of Zillah Rajeshahye, dated 30th August, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 10th instant, requesting their opinion as to the right of the nazir of the civil court to a commission on sales in certain cases.

2. I am directed to observe that the sale by the nazir of the property of a deceased person, not intestate, is not analogous to that of the sale of lawarisee property. In the latter case, the property being at the disposal of Government, they are competent to grant the nazir a commission on the proceeds of the sale. In the former, the sale may

be said to be extra-official, for conducting which the nazir can claim no remuneration but what may have been agreed on by an arrangement with the administrator.

3. In reply to your second question, I am directed to refer you to the constructions Nos. 509 and 587 of the construction book; and to observe, with reference to your third, which the Court presume relates to cases coming within the provisions of Regulation XVIII. 1817, that the same rule is applicable to sales of property in satisfaction of sums embezzled by public officers; such sales being, in fact, in execution of decrees or orders of the court.

The Western Court, on the 1st November, 1833, concurred in this construction.

August 30th, 1833.

To the Judge of Zillah Hooghly, dated 6th September, 1833.

No 825
1831
Reg V sec 5, Cl 3.

I am directed by the Court to acknowledge the receipt of your letter of the 23d ultimo, and in reply to inform you that suits for the property or possession of land held exempt from the payment of revenue, are not, under the provisions of Clause 3, Section 5, Regulation V. 1831, cognizable by moonsiffs, although the circumstance of the land being rent-free or exempt from the payment of revenue may not be disputed by the parties.

The Western Court, on the 4th October, 1833, concurred in this construction.

September 6th, 1833.

From the Commissioner of Circuit, 13th Division, to the Register of the Presidency Court of Nizamut Adawlut, dated 12th August, 1833.

No. 826.
Recognizance by a European British subject to keep the peace.

Several instances of disputed possession between European indigo planters having lately occurred in the Pubna district, which has rendered the precautionary measure of taking security from the parties to keep the peace necessary, and it being doubtful whether or not a magistrate can require security, beyond the amount of penalty he is authorized to levy from a European, under the provisions of the 53d of George III. Chapter 155, Section 105, I have to request the Court will favor me with their opinion and orders on the subject for my guidance.

To the Commissioner of Circuit for the 13th Division, dated 6th September, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 12th ultimo, requesting to be informed whether a magistrate can require security to keep the peace from a European beyond the amount of penalty, which he is authorized to levy under the provisions of 53 Geo. III. Cap. 155, Section 105.

2. Your question appears to arise from an idea that the amount of the penalty of bond is to be levied, in the event of a breach of the peace, by the magistrate. The Court direct me to refer you to the Circular Order issued by Government on the 9th June,

1830, to the commissioners of circuit on this subject,—whence you will perceive that the only proceeding for the forfeiture of recognizances to keep the peace, is in the Supreme Court, consequently the amount of the penalty of such recognizances is not affected by the provisions above quoted.

September 6th, 1833.

From the Judge of Zillah Mynpooree, dated 15th July, 1833.

No. 827.

Salaries of public officers may be attached in execution of decrees of Court, but not pensions granted by Government. 1814 Reg. XII.

I request you will ascertain from the Court of Sudder Dewanny Adawlut, Allahabad, whether the salaries of public servants when due can be considered as property belonging to them, and as such liable to attachment in satisfaction of decrees, and whether the courts of justice can compel the disbursing officers to remit the amount to them.

2. It has been the practice of this court for many years, on the application of plaintiffs for the realization of sums decreed in their favor against individuals receiving either pay or pensions from Government, to send requisitions either to the collector, magistrate, or commanding officer, as the case might be, directing that the salary or pension in whole or part be remitted to the court for the liquidation of the demand against the individual. Requisitions of this nature have also been made by me through the judges of other zillahs to the magistrates of those districts, and the authority of the court in this respect hitherto has never been questioned.

3. Mr. Fraser, the officiating magistrate and collector of this district, now objects to carry such orders into execution, on the ground that the salaries are not the property of the individuals until the money is actually received by them. Accompanying are two roobukaries, one from the collectorate, the other from the Foujdary Court; in both the objection above stated is set forth, but in the former Mr. Fraser complies with the orders of the court, considering himself obliged to do so by Section 39, Regulation XXVII. of 1803; in the latter he refuses, there being no enactment requiring magistrates to obey the orders of the civil court.

To the Judge of Zillah Mynpooree, dated 9th August, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 15th ultimo, regarding the attachment of the salaries of public servants in execution of a decree.

2. In reply, I am directed to state that any sum of money actually due to a public servant, on account of salary, is liable to attachment, in the same manner as other property; you are therefore at liberty to attach such money, and to call on the disbursing officer to assist you in effecting the attachment, and such disbursing officer is required to give his assistance. Should the amount of salary actually due be insufficient to satisfy the decree, process can be immediately issued against the person of the defendant.

To the Register of the Court of Sudder Dewanny Adawlut, Western Provinces, dated 6th September, 1833.

I am directed by the Presidency Court to acknowledge the receipt of your letter of the 9th ultimo, and its enclosures, relating to the attachment of the salaries of public officers in execution of decrees.

2. In reply, I am directed to inform you that the Presidency Court concur in the letter which the Western Sudder propose to address to the judge of Mynpooree in reply to his of the 15th July last, and, with reference to the attachment of pensions, alluded to by the zillah judge in the 2d paragraph of his letter, to forward the accompanying copies of correspondence with the Provincial Court of Dacca on the subject.

Copy of a letter from the judge of the Provincial Court of Dacca, dated the 18th March last, and of its enclosures.

Copy of a letter addressed to him in reply on the 3d May last, and of the Persian roobukaries therein mentioned.*

September 6th, 1833.

Extract of a letter from the Commissioner of the 11th Division to the Register of the Presidency Court of Nizamut Adawlut, dated the 10th August, 1833.

Para. 6. I would also beg to be informed by the Court what is to be done in the case of a postponed trial commenced before a jury, where it may be impracticable from death or other cause to procure the attendance of all persons composing the jury.

No. 828. 1832 Reg. VI.

To the Commissioner of the 11th Division, dated 13th September, 1833.

With reference to the concluding paragraph of your letter of the 10th ultimo, submitting the proceedings on the trial of Bunseeram and others for plundering, I am directed by the Court to inform you that in the case supposed by you, new jurors should be appointed in the room of those whose attendance cannot be procured; and that the former evidence should be read over to them and fresh evidence taken, in the same manner as formerly, when a postponed trial came on before a circuit judge and law officer, who did not sit on the original trial.

The Western Court, on the 4th October, 1833, concurred in this construction.

September 13th, 1833.

From the Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 20th September, 1833.

I am directed by the Court to transmit, for the purpose of being laid before the Presidency Court, the annexed extract, paragraph 4, from a letter received from the judge of zillah Furruckabad, under date the 13th instant.

No. 829. 1825 Reg VII.

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* See construction of 3rd May, 1833, No. 786, page 99 of this volume.

2. The Court are of opinion that the practice alluded to in this extract, of ordering a resale of property, on the ground that the sum realized has, for special reasons, been extremely small, is illegal: the judge is competent to take every precaution to prevent the sale of property for less than its marketable value, but after the sale has been once closed and the bidder being given to understand that he is the purchaser for the sum offered, the property cannot on this ground be again offered for sale, having become the right of the purchaser. Should the Court concur in this construction of Regulation VII. 1825, it will be communicated to the judge of Furruckabad for his future guidance.

The Calcutta Court, on the 18th October, 1833, concurred in this construction.

September 20th, 1833.

From the Register of the Court of Sudder Dewanny Adawlut for the Western Provinces, to the Register of the Presidency Court, dated 8th February, 1833.

No. 830.

1793 Reg. XV. Secs. 10 and 11. 1798. Reg I. Sec. 2. 1803. Reg XXXIV Secs 9, 10 and 12.

I am directed by the Court to transmit, for the purpose of being submitted for the perusal of the judges of your Court, the annexed copy of a letter under date the 21st ultimo, received from the judge of zillah Futtehpoor.

2. The question referred by the judge of zillah Futtehpoor is, whether in a case of simple mortgage, the mortgager, after the expiration of the term of mortgage, may, in paying or depositing the sum borrowed, claim to obtain possession of the property mortgaged, by summary process of the civil court.

3. On referring to the reports of the Presidency Court, (page 3, volume III.) the Court observe that in the case of Kurta Ram and another versus Afzul Ali, the summary decisions of the additional register, for giving possession to the assignee of the mortgager under similar circumstances, was upheld; but from the note appended to that case and the reference made to Regulation I. 1798, and the Circular Order, 22d July, 1813, it may be inferred that the mortgage was of the nature of a bye-bil-wufa or conditional sale, regarding which under that circular order no doubt can be entertained. The Court request to be informed whether the mortgage was actually of that description; and also, whether any general rule has hitherto been adopted by the Presidency Court with regard to the admission of summary claims to obtain possession in cases of simple mortgage.

To the Register of the Western Provinces, dated 29th March, 1833.

I am directed by the Presidency Court to acknowledge the receipt of your letter of the 8th ultimo, requesting to be informed whether the mortgage bond, alluded to in the case of Kurta Ram Rai and another versus Afzul Ali, (in page 3, volume III. of the Select Reports of the Sudder Dewanny Adawlut,) was a deed of mortgage and conditional sale, or of simple mortgage, and further whether any general rule has hitherto been adopted by the Presidency Court with regard to the admission of summary claims to obtain possession in cases of simple mortgage.

2. In reply to the first question I am directed to state, that it is not distinctly stated in the proceedings, whether the mortgage was conditional or simple, and that the fact cannot be ascertained, as the bond is not with the proceedings, having apparently, if filed, been returned to the party, as is usual in summary cases. The case however having arisen in the zillah court of Ghazeepore, the Western Court may be able to ascertain the fact from the zillah judge.

3. With regard to the practice of this Court, I am directed to state that having inspected the proceedings in several summary cases of mortgage, I have been unable to find any case in which the mortgage appeared to be decidedly simple; the return of the bonds precluding the possibility of ascertaining the fact. The Presidency Court will be glad to learn the opinion which the Western Court may form in regard to the case alluded to in the 2d paragraph of this letter.

Extract of a letter from the Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 20th September, 1833.

Para. 5. The Court direct me to take this opportunity of replying to your letter of the 29th March last, regarding simple mortgages. As suggested in that letter, application was made to the judge of zillah Ghazeepore for the original bond in the case of Kurta Ram and another versus Afzul Ali; but it had been returned to the party and no copy was forthcoming. On reference however to the printed book of constructions (No. 277, page 99 of vol. I.) the Court find that on the 9th July, 1817, the Presidency Court held that "there was no provision in the Regulations for a summary suit, in cases brought before the civil courts under Sections 9 and 10, Regulation XXXIV. 1803, which relate only to simple mortgage." The Court are disposed to concur in the interpretation of the law, and will cause it to be adopted as a rule of practice in the Western Provinces should the Presidency Court view the construction in the same light.

The Presidency Court, on the 18th October, 1833, *concurred in this construction.*

September 20th, 1833.

To the Register of the Nizamut Adawlut, Western Provinces, dated 20th September, 1833.

No. 831.

I am directed by the Presidency Court to acknowledge the receipt of your letter of the 12th July last, relating to the power of a magistrate to demand security to keep the peace, whenever there may appear grounds to warrant the measure.

1807. Reg. IX Sec. 3. 1817.

2. In reply, I am directed to inform you that the Presidency Court do not conceive that power to be vested in a magistrate by the Regulations.

Reg. XX Sec. 25, Cl. 1. 1825.

3. They direct me to observe that by Section 3, Regulation IX. 1807, the magistrates are authorized, on a complaint being preferred against any individual, to call upon him to give security to keep the peace, while the charge is under examination. By Clause 11, Section 25, Regulation XX. 1817, police darogahs may, in cases of manifest necessity, require security to keep the peace from persons, apprehended, which

Reg. IV. Secs. 2 & 4.

as in the former case, is to remain in force while the charge preferred against him is under examination. By Section 2, Regulation IV. 1825, the criminal courts are competent, on the conviction of an individual of any specific offence, to require from him a moochulka or penal recognizance, to keep the peace, and, in cases of an aggravated nature, to demand security in addition to the moochulka; and by Section 4 of the same Regulation the magistrates may take moochulkas to keep the peace from persons not convicted of a specific offence.

4. Connecting the provisions quoted, the Presidency Court conceive that every necessary precaution has been adopted in the Regulations for the preservation of the peace generally, and towards particular individuals: nor do they think it would be proper further to extend the power of the magistrate.

The Western Court, on the 15th November, 1833, concurred in this construction.

September 20th, 1833.

To the Judge of Zillah Tirhoot, dated 27th September, 1833.

No. 832.

1831.
Reg. V. Sec. 3.

I am directed by the Court to acknowledge the receipt of your letter of the 10th instant, and in reply to inform you that the Court do not consider you competent to remove a moonsiff from one jurisdiction to another without a reference, through the commissioner, to them.

The Western Court, on the 18th October, 1833, concurred in this construction.

September 27th, 1833.

From the Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 27th September, 1833.

No. 833.

1814
Reg. XXIII Sec. 47.
1831
Reg. V. Sec. 7.

I am directed by the Court of Sudder Dewanny Adawlut for the Western Provinces to transmit, for the perusal of the Presidency Court, the annexed copy of a letter received from the judge of zillah Bareilly under date the 14th instant.

2. In reply to the 2d paragraph of the judge's letter, the Court propose to inform him that as the object of Government in the late arrangement was, that cases not exceeding 300 rupees in amount should be decided by officers receiving a salary of 150 rupees a month, and near to the homes of the parties, the general practice of referring such suits to sudder ameens must be considered objectionable, especially as the establishment of moonsiffs was framed so as to admit of all such cases being tried by them, and no such assistance from the sudder ameens ought to be required.

3. Section 47, Regulation XXIII. 1814, however being still in force, such cases may, on special reasons, to be assigned by the judge in each case, be referred to sudder ameens or principal suddor ameens.

The Presidency Court, on the 18th October, 1833, concurred in this construction.

September 27th, 1833.

To the Officiating Judge of Zillah Jungle Mehals, dated 4th October, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 19th ultimo, No. 111 of 1833.

No. 834.
1832.
Reg. VII. Sec. 3.

2. In reply, I am directed to inform you that the Court are of opinion that appeals to the judge from the decisions of registers and principal sudder ameens not being among the exceptions contained in Section 3, Regulation VII. 1832, the pleadings in *all* such cases should be written on stampt paper of the value of four rupees.

The Western Court, on the 8th November, 1833, concurred in this construction.

October 4th, 1833.

Extract from a letter, addressed to the Session Judge of Zillah Jessore, under date the 4th October, 1833, in reply to his letter of the 24th of the preceding month.

No. 835.
1832.
Reg VI.

Para. 2. The Court direct me to state that having commenced the trial of the prisoners noted in the margin, with the aid of your Mahomedan law officer, you were not competent in an intermediate stage of the trial to call in the assistance of a punchayet, (whose opinion, they observe, appears to have been formed on a mere perusal of the written evidence.) The verdict of the punchayet being to all intents and purposes null and void, they desire that you will conclude the trial by taking a futwa from your law officer; and that you will refer the trial, in the event of your differing in opinion with him, as required by the regulations.

Buroop Sirdar and others, No 1 to 4 of Statement No. 1,—Convicted—No. 1, 2, and 3 of dacoity, attended with wounding and plundering, No 4, of concealing plundered property knowingly. Sentenced to be imprisoned with labor in irons—No 4 for 2 years and the rest for 3 years each.

The Western Court, on the 15th November, 1833, concurred in this construction.

October 4th, 1833.

To the Judge of Zillah Mynpooree, dated 11th October, 1833.

No. 836.
1829
Reg X. Sch. A, Arts. 3 and 40.

I am directed by the Court of Sudder Dewanny Adawlut for the Western Provinces to acknowledge the receipt of your letter of the 3d instant.

2. In reply, I am directed to inform you that deeds of Hibeh-bila-Ewuz should, as directed in Article 46 of Schedule A, Regulation X. 1829, be charged as "agreements" (Article 3, Schedule A,) with such stamp as the parties may determine.

The Presidency Court, on the 8th November, 1833, concurred in this construction.

October 11th, 1833.

To the Judge of Zillah Bareilly, dated 11th October, 1833.

No. 837.
1831.
Reg. VIII. Sec. 5.

I am directed by the Court to acknowledge the receipt of your letter of the 28th ultimo.

2. In reply, I am directed to inform you that summary suits for rent instituted by holders of rent-free land against their tenants, should be tried by the collectors

under the provisions of Regulation VIII. 1831, the civil courts being incompetent to receive them.

The Presidency Court, on the 8th November, 1833, concurred in this construction.

October 11th, 1833.

To the Judge of Zillah Cuttack, dated 11th October, 1833.

No. 838.
1817.
Reg. XVII. Sec. 14, Cl. 2.

I am directed by the Court to acknowledge the receipt of your letter of the 21st ultimo, requesting to be informed whether, in a miscellaneous case, you can proceed against a person whom there may appear sufficient grounds to bring to trial for forgery.

2. In reply, I am directed to refer you to the words "to any civil proceedings whatever" in Clause 2, Section 14, Regulation XVII. 1817, and to observe that they would include the miscellaneous case alluded to. I am directed to add that in the event of your making the commitment, it should be tried by the commissioner, and not by you in your capacity of session judge.

The Western Court, on the 15th November, 1833, concurred in this construction.

October 11th, 1833.

From the Judge of Zillah Goruckpore to the Register of the Western Provinces, dated 26th September, 1833.

No. 839.
1831
Reg IX Sec. 2, Cl 2, 3, 4 and 7.
1832
Reg VII. Sec. 15.

I have the honor to acknowledge the receipt of your letter of the 6th instant, in continuation of your communication of the 19th July, relative to the point of construction referred in my letter of the 6th of that month. (See construction No. 805, page 112 of this volume.)

2. I would beg respectfully to submit that your letter under acknowledgment has relation merely to the third point referred by me described in the 3d clause of paragraph 6 of my letter; leaving the two preceding points, detailed in the 1st and 2d clauses of my letter unnoticed.

3. The second clause I will not press, but must, I conclude, consider that the two Courts, Western and Presidency, have decided that the five and half lines which concluding Clause 2, Section 2, Regulation IX. of 1831, are explained to have reference to all suits, regular as well as summary, by Section 15, Regulation VII. 1832, are simply synonimous with the terms "modify or reverse."

4. But I should feel greatly obliged by your communicating to me the result of the Court's decision on the first point, contained in the first clause of the above quoted paragraph of my letter. It is quite clear that *the letter* of the Regulation does not give the judge authority to reverse the order of the lower court without examining the papers of the case; and in my opinion, which I wish to advance most respectfully, such a proceeding is contrary to the *spirit* of the whole judicial code and every principle of justice.

5. It is easy to see the expediency and propriety of investing a single judge of the Sudder Dewanny Adawlut with the authority to confirm the lower court's order without reviewing the record, if the appellant shall be unable to make out a tangible objection thereto; and if, even on his own shewing, the order of which the appellant complains shall appear just and legal. But that the deliberate decision of a court of justice should be liable to be reversed merely upon the unproved, and very probably garbled and misstated, representation of an interested party,—without any examination as to the facts of the case, any report called for, or investigation held,—is so totally contrary to every principle of jurisprudence that I have ever learned, that I cannot consider the non-insertion of the authority for such a proceeding in the latter division of the clause as an omission, or that such a construction of the Regulation was ever contemplated by the legislature.

6. I am most anxious to have this point clearly settled as the order out of which this correspondence arose is not the only one* I have received from the Court lately, in which a single judge has, simply upon the petition of a dissatisfied party, directed the re-admission on the file and further investigation of cases, which, I am inclined to think, had they been examined, would have been found to have been fully investigated even in the points which the petitioner has stated to have been passed over unnoticed; and as, pending a re-investigation or the preparation of a detailed statement of the facts relative to such cases, the execution of the original order is stayed, much inconvenience must arise from the circumstance to the parties; to say nothing of unnecessary waste of the judge's time, which will not admit in this zillah of each case having one decision passed on it within a reasonable period.

* Vide note at the foot of this letter which note I request may be recorded with the letter as an illustration of the inexpediency of the practice objected to.

Note.—My allusion here is more particularly to an order of the officiating judge dated 19th August last, in the case "Unoophnath Dooly, petitioner," my reply to which was delayed for the answer to my reference of the 6th July. In that case the parties in 1823 adjusted their differences by private arbitration. One party sued out execution of the award, under the provisions of Regulation VI. 1813. The arbitrators were summoned, and the award authenticated, and execution was granted on 12th July, 1823. This order was annulled by the Court of Appeal on the 6th December 1826 and 7th April, 1827, on a supposition that the period stipulated in the Regulation had been exceeded ere execution was petitioned for. At the Sudder Dewanny Adawlut this objection was over-ruled on the 21st November 1827 and 5th December, 1827, and the original order of the zillah court was confirmed. In the mean time one party had brought a regular suit to set aside the award, and on the 12th March, 1825, the pundit sudder ameen, after a long investigation, gave a decree, annulling the award. In appeal before the judge on the 11th February, 1829, the sudder ameen's decision was reversed, for reasons stated at length in the decree. A special appeal was applied for, and on 31st August 1832 and 25th March, 1833, two judges of the Patna Court of Appeal decided that the zillah judge's decree was in all respects just and unobjectionable.

2. The officiating judge of the Sudder Dewanny Adawlut has by a proceeding dated 17th ultimo, merely upon the petition of the worsted party, without any reference to the record, ordered that this thrice-decided case shall be re-admitted to its original number of the judge's file, and that enquiry be made on a particular point, which particular was fully and carefully investigated on the 19th and 20th April, 1824, previous to the first decision of the case in the sudder ameen's court.

To the Judge of Zillah Goruckpore, dated 11th October, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 26th ultimo.

2. On the first point referred in your letter of the 6th July, I am directed to acquaint you that the Court consider themselves fully competent to exercise powers vested in them by the 2d Clause of Section 2, Regulation IX. 1831, and Section 15, Regulation VII. 1832, without calling for the proceedings, whenever the order or decision appealed against, whether in a regular or summary suit, may appear to them manifestly unjust or illegal, or on any other of the grounds defined in the Clause first cited, In such cases a revision of the proceedings is obviously unnecessary to the determination of a fact which is clear and manifest in the face of the order or decision itself, or can be shewn to be so by documents accompanying it. And you will observe that the following Clause of the same Section provides for cases wherein the Court may see cause of doubt by giving them a *discretion* to call for the proceedings of the lower court or such parts of them as may appear necessary, and by the 7th Clause of the same Section, with the view of enabling the Court duly to exercise the powers vested in them by the said Section, the several courts of subordinate jurisdiction are strictly enjoined to conform to those parts of the regulations in force, which require them to record the point or points at issue between the parties and the grounds on which their judgments or orders may be issued.

3. As regards the particular case which appears to have given rise to your present reference, I am directed to inform you that the judge by whom the order was passed proposes to revise his proceedings.

4. The Court observe that you do not now appear to entertain any doubt regarding the second point on which you requested their opinion.

The Presidency Court, on the 8th November, 1833, *concurred in this construction.*

October 11th, 1833.

From the Judge of Zillah Purneah, dated 25th September, 1833.

No. 840.

Pleaders' fees in cases sent back for re-trial.

I have the honor to forward herewith, for the orders of the Superior Court, a copy of a petition presented to me by one of the plaintiffs in the case of Baboo Doolar Singh and others versus Ranee Padmawattu and others, complaining of a hardship in being obliged to pay the pleaders' fees twice over in a case of very considerable amount,—the amount receivable by the pleaders on either side being 1,000 rupees.

2. The case (No. 3322, on the Superior Court's file) was originally decided in the Provincial Court of Moorshedabad; an appeal having been preferred to the Sudder Dewanny Adawlut, the decision of the Provincial Court was set aside by Mr. Walpole on the 9th May last, as being incomplete, and the case ordered back for further investigation. The Moorshedabad court having been abolished, the case has come to this court under the provisions of Clause 1, Section 3, Regulation II. 1833; this makes it necessary for the parties to employ other pleader than those originally retained, the pleaders of the Moorshedabad court having already received the whole of the sum deposited to their credit.

3. The pleaders at Moorshedabad having received the money under an order of that court, it clearly is out of my power to interfere in making them refund any portion of it, and I have therefore forwarded the petition for the disposal of the Court. In the meantime I have addressed the judge of Moorshedabad, requesting him to levy half the sum drawn by the pleaders there and to keep it in deposit till the instructions of the Court shall have been received, the amount to be remitted here for the pleaders of this court employed by the parties, should that be allowed; or otherwise to be returned to the pleaders formerly retained.

To the Judge of Zillah Purneah, dated 11th October, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 25th ultimo, forwarding a petition from one of the plaintiffs in the case therein mentioned objecting to the deposit of a second fee; and requesting the Court's orders thereon.

2. In reply, am directed to inform you that under the circumstances stated a full fee should be deposited, and that on the ultimate decision of the suit, you should exercise your discretion in awarding to the vakeels of your court such portion thereof as you may deem just and proper, and in determining to which party the fees already paid by the parties in the Provincial Court shall be charged.

October 11th, 1833.

To the Commissioner of Circuit for the 19th Division, dated 21st June, 1833.

No. 841.

Magistrates not competent under any circumstances to release prisoners under sentence.

I am directed by the Court to acknowledge the receipt of your letter of the 3d instant, and its enclosures, reporting that the magistrate of Balasore had released nine prisoners who were in such a state of health as to render their chances of living if kept in jail uncertain, and requesting the Court's sanction to the measure.

2. The Court are surprised that the magistrate should have taken upon himself to release prisoners before the expiration of their sentences without the authority of Government, a stretch of authority which in their opinion no circumstances can justify. In the event of his deeming it proper and expedient that the prisoners should be released, he should have submitted an application to that effect through you to this Court, removing the prisoners to more healthy or comfortable quarters to prevent any ill effects arising from their detention, pending the necessary reference for their temporary release or pardon.

8. Under these circumstances the Court desire that you will direct the magistrate to take the prisoners again into custody, in pursuance of the sentences passed against them, and to cause medical assistance, and every indulgence consistent with their safe detention, required by their situations, to be afforded to them.

From the Commissioner of Circuit, 19th Division, to the Register of the Presidency Court of Nizamut Adawlut, dated 25th September, 1833.

With reference to the orders of the Court of the 21st June, I beg to forward, at the request of the magistrate of Balasore, the annexed copy of his letter of the 14th September, reporting the re-apprehension of nine prisoners named whom he had, as previously reported, released in the hopes of saving their lives.

2. The Court will observe that the magistrate requests a re-consideration of the subject of releasing such prisoners without waiting for the Court's previous authority, as the progress of disease does not generally admit of the delay inevitably attending previous references.

3. The other parts of the magistrate's present reference do not call for any comment from me.

From the Magistrate of Balasore to the Commissioner of the 19th Division, dated 14th September, 1833.

In conformity with the instructions contained in your letter of the 23d July last, I have the honor of informing you that the prisoners therein named have been re-apprehended.

2. The lives of all these people have been saved by the change of air: they have all as yet continued well since their return to jail, and most assuredly not one would have survived a week had they remained in confinement; they were reduced to skeletons by fever and dysentery, their legs and feet were swollen, and medicine produced no effect upon them.

3. The Court of Nizamut Adawlut observe that no circumstances can justify such a stretch of authority, and that in the event of my deeming it expedient that a person should be temporarily released, I should submit an application to that effect through you to the Court. How useless such a proceeding would be the correspondence on this subject sufficiently shows. My report to you, mentioning their release, is dated the 8th May, the orders of the Court of Nizamut Adawlut are dated the 21st June!— The progress of fevers and dysentery is not so slow that a delay of five or six weeks is to be regarded as of little consequence.

4. Any magistrate who is unfit to be entrusted with a discretionary power to release a prisoner temporarily to save his life, must be unfit to perform 19-20ths of the other duties entrusted to him.

5. The situation of the jail is healthy, but the great difference of climate that prevails in different parts of this jurisdiction, as it occasions sickness on removal from one

place to another, also renders change of air so peculiarly efficacious, particularly in cases of dysentery, which is the most common disease amongst the natives of the province.

To the Commissioner of Circuit for the 19th Division, dated 11th October, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 25th, forwarding copy of one from the magistrate of Balasore, dated the 14th ultimo, reporting that he has re-apprehended nine prisoners, as directed by the Court's orders of the 21st June last, and requesting a re-consideration of the subject.

2. The Court must again remark that the magistrate has in this matter entirely mistaken his powers and duty. He has no discretionary power to release a convict under the circumstances of the case in question. His doing so was therefore an illegal act which this Court could not uphold. It required a positive enactment (Section 10, Regulation XIV. 1816) to authorize the Nizamut Adawlut to remit the remainder of a sentence passed on a prisoner in certain specified cases, among which that of sickness is not included, and by the orders of Government dated the 30th March, 1830, circulated on the 16th April of the same year, it is directed that all applications for the pardon of aged and decrepid prisoners should be forwarded to the Governor General in Council for confirmation. The power therefore assumed by Mr. Ricketts in the present instance cannot be justified by any grounds of expediency, and the Court desire that he will carefully refrain from exercising it again.

October 11th, 1833.

Resolution of the Presidency Court of Sudder Dewanny Adawlut, dated 1st November, 1833.

No. 842.

1825
Reg II Sec 2, Cl 1.

Whereas it has been customary for parties petitioning for review of orders rejecting applications for a review of judgment to write their petition on stampt paper prescribed for miscellaneous petitions, viz. two rupees' value, on the plea that three months have not elapsed since the date of the order to be reviewed; and whereas such petition, being in fact a second petition on the same subject, ought to be governed by the rules applicable to the petitions for a review in the first instance:

It is resolved, that every and each such petition, provided it be presented within three calendar months from the delivery or tender of the decree appealed against, may be written on stampt paper of the value of two rupees: but, if perferred after the expiration of that period, all such petitions must be written on stampt paper prescribed in List 8, Schedule B, Regulation X. 1829, with reference to the amount or order of the property adjudged against the party desiring the review; in like manner as if a regular appeal were preferred from such judgment, as required by Clause 1st, Section 2, Regulation II. 1825.

The Western Court, on the 29th November, 1833, *concurred in this construction.*

November 1st, 1833.

From the Judge of Zillah Furruckabad to the Register of the Western Provinces, dated 7th October, 1833.

No 843.
1803
Reg II sec 8.

I think it my duty to bring to the notice of the Court the existing state of the transactions between the civil court of this district and the nabob of Furruckabad. I am inclined to think it expedient that some definitive arrangements should be made.

2. Section 8, Regulation II. 1803, is as follows: "The following article being the "sixth article of a treaty concluded with the nabob of Furruckabad on the 4th of June, "1802, is hereby enacted into a rule, for the guidance of the zillah court of Furruckabad. "Article sixth:—The authority of the Court of Adawlut shall not extend to the person of "the nabob, but as his connections and dependants are undefined, and as it is the "object of the British Government to introduce a fair and impartial administration of "justice throughout the province of Furruckabad, it is agreed that whatever complaint "may be proferred against any of the nabob's dependants shall, in the first instance, be "referred to the nabob, and in the event of the complainant not receiving speedy jus-"tice, or being dissatisfied with the nabob's decision, the complaint shall be decided in "the Adawlut." On this several questions arise.

1st. What length of time is to be sufficient to warrant the enforcement of the clause of "not receiving speedy justice?" On the whole the nabob certainly has been more tardy in deciding cases than the court, even before the introduction of the new system. I would also remark that in the Persian treaty, the copy of which is in the office the meaning is the same, but in the Persian copy of the Regulations it is different, no mention being made of the word "speedy," the words being "moodaee buhuk khood mo rusud."

2dly. In what way is the decision of the nabob to be made or intimated? The custom universally was for the nabob to return the case with a statement of his opinion to the court, which statement generally concluded with words to this effect—"the matter is left in the hands of the court." This statement was generally taken and decision given to that effect, the different judges seeming to think that they had no option, (unless the plaintiff was dissatisfied,) to do otherwise. But in 1830 a case, Chooneeloll versus Permanund, was reversed by Mr. Taylor on his own authority, without a petition from the plaintiff, who had obtained a decree from the nabob. Mr. Taylor dismissed the case. It was appealed to the Provincial Court, and Mr. Taylor's decision reversed, not on the merits of the case, but on the grounds that he was not justified in interfering with the nabob's decision. Another case showed still stronger, the necessity of some arrangement, viz. Dal Chund and Thakoorpurshod versus Radakishen, referred to the nabob, and by him returned with a statement, according to which a decree was given by Mr. Taylor on the 30th March, 1830. The defendant appealed to the Provincial Court at Bareilly, by whom the judge's order was reversed, I believe on the same grounds, but am not quite certain, as no copy of the order was ever sent from that court to this. The plaintiff* then prayed for execution in the Bareilly Court, on which the order passed was

* Sic Orig. But query, defendant?

that "the order cannot be given from the court." He then petitioned in November, 1832, in this court, and the case was called for to inspect, before issuing orders. As the pressure of Foujdarry was then so great, this could not be readily done, and plaintiff went to the Sudder Dewanny, by whom an order was issued on 5th January, 1833, to enforce the nabob's decision. This was in progress, when on the 21st May last fresh orders were received to postpone it. The case therefore lies unfinished.

3dly. Has the nabob the power to receive cause originally himself? The Regulation (both Persian and English) does not seem to sanction this; the phrase being, "shall in the first instance be *referred* to the nabob." By whom referred unless by the court in which the suit was first instituted! The custom has hitherto been invariably as follows:—after the suit has been filed in court, if the defendant wishes, he represents that he is one of the nabob's relations and dependants. The nazir is ordered to ascertain the correctness, (except in those cases, where the defendant is a well known person,) and then the case is transferred to the nabob. The claim was never advanced by any nabob or guardian untill lately by Nabob Amud Yar Khan, the present guardian. I had heard he was in the habit of hearing cases originally, but as it was not brought before me officially, I did not take notice of it, until a petition was on the 22d August last, presented by Kuramut Ally Khan, stating that the nabob had received a suit originally, against him, that he had applied to several of the vakeels to defend his suit, but they all refused, as it was quite a novel proceeding, without the express permission of the court. On questioning the vakeels, I found Kurum Ally Khan's statement correct, and was also informed that the nabob (or rather the guardian) was in the habit of hearing suits originally himself; and that all proceedings connected with them were on plain paper. I wrote to the nabob to know if this was the case, and how many suits had been entertained in this way: he would not return a positive answer to either question; but in his letter asserted generally, that according to the Regulations he had the right to an original jurisdiction in entertaining suits.

4thly. Where is the defendant, (being of course a relation or dependant,) who is dissatisfied, to bring his appeal? or is he to be allowed one? The Regulation is silent on this head. It is true the Bareilly Court has been in the habit of receiving appeals of this nature, but the measure is open either to the sanction or disapprobation of the Sudder.

5thly. Has the nabob the power to enforce a decree? Nothing of the sort ever occurred, nor even was the question ever raised until August last, when the nabob wrote to the court, demanding the right. I answered that, without orders from superior authority, I would not sanction any departure from established usage, but that I intended to bring the whole case before the Sudder Dewanny, for the consideration and orders of that Court.

3. Formerly the number of cases sent to the nabob were very few, two or three per year: latterly they have increased in a tenfold degree. The reasons seems to be this; at the time of the treaty, the nabob gave in a list of his relations, near and distant, and some particular dependants and servants, for whom he wished to secure fixed salaries in entail. This was agreed to by the British Government, and the salaries were

confirmed to these people, but as each man died his salary or pension (zeehukkee) was divided among his sons or other heirs, and again sub-divided at the death of the latter, and so on. The numbers have increased so as to be a nuisance to the city. The subsistence of some of them is dwindled down to not above one rupee per month, (this sort of proceeding must sooner or later come to an end.) With few exceptions they are too proud to do any thing, are almost universally in debt, borrowing from any one they can, mortgaging their pensions or any lands they may possess over and over again, and living dissolute, vicious lives, often engaged in street brawls to the great annoyance of the whole community; yet most of these people on any complaint being filed either in the judge's or magistrate's court, affect to style themselves nabob, to answer by letter, and indeed to set the authority of the court at defiance. When magistrate I brought this to the notice of the commissioner of the division.

4. This sort of *imperium in imperio* would hardly seem a desirable state of things, and I think it might be found expedient to make some arrangements regarding the points at issue. The nabob might be placed on the footing of a principal sudder ameen; if this were not deemed proper, on account of his rank and station, he might be required to appoint a dewan at a fixed salary to be paid by him to decide these causes, as a principal sudder ameen, and subject like those officers to the supervision of the court of the district, or the nabob might be allowed, as far as regards civil suits against his relations and dependants, to exercise the powers of judge, subject only to the Sudder Dewanny; (one objection to this would be the small amount of the majority of the suits, most of them being cognizable by the moonsiffs; or lastly to abolish the jurisdiction of the nabob altogether, and extend that of the civil courts of the district, both judge's and moonsiffs', over the persons and suits under consideration, with the exception of the nabob himself; and this I should be inclined to think the most expedient of the whole.

5. I am however bound to state, that as far as I am able to ascertain both from enquiries, and from having looked over several of the cases, the decisions of the nabob have been founded on justice, and generally have given as much satisfaction as those of the regular civil court. Nevertheless the double jurisdiction is an inconvenience.

From the Judge of Zillah Furruckabad to the Register of the Sudder Dewanny Adawlut Western Provinces, dated 16th October, 1838.

In looking over my letter of the 7th instant, relative to the jurisdiction of the nabob of Furruckabad, I find I have forgotten to mention one point. In the event of the nabob's retaining his jurisdiction on any thing like the present footing, I would beg to suggest that a limited time only should be given to the defendant, after receipt of the notification, to plead that he is a "relation or dependant," and demand that the suit be sent to the nabob. At present the practice is for them to advance the claim at any time, and often they make use of the privilege to delay the suit. They wait till all the stages have been gone through, and the cases ready for hearing in the civil court, and then demand the transfer of the cause to the nabob, where it lies usually for a year or two.

Indeed I am inclined to think that the chief reason in transferring the cases has been merely a wish on the part of the defendants to put off the evil day; the nabob being much more dilatory than the court, even before the new system was established.

To the Judge of Zillah Furruckabad, dated 8th November, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 7th ultimo, regarding the jurisdiction of the nabob of Furruckabad.

2. The Court direct me to communicate to you the following answers to the questions referred in your letter.

Question 1. It must remain with the judge, on the showing of the plaintiff, to determine whether the delay in the decision of the case has been such as to authorize his receiving the suit on the ground that the plaintiff has not received speedy justice.

Questions 2 and 5. The decisions passed by the nabob should be enforced by himself, by means of the influence which he is supposed to possess over his own dependants. The courts are neither called on, nor authorized to aid in their execution, nor is the nabob himself vested with any special authority with this view by the Regulations.

Question 3. The nabob has no authority to receive or act on petitions of plaint except on reference from the judge of the zillah court. This is plainly required by the terms of the Regulation; all decisions which may have been passed by the nabob without reference from the court, are consequently null and void.

Question 4. A defendant being dissatisfied with the decision of the nabob, has no right of appeal; as he is necessarily a dependant of the nabob, the Regulation appears to consider that in becoming his dependant, he has voluntarily subjected himself to his authority in civil matters.

3. With regard to the inconvenience arising from the great number of persons styling themselves relatives and dependants of the nabob, I am directed to observe that, as their possessing this title confers on them no advantages or privileges whatever, but merely subjects claims against them in the first instance to the investigation of the nabob, and even deprives them of the right of appeal to the regular courts, which is possessed by others, the Court cannot imagine that any modification of the law is required, but rather incline to think that the inconvenience stated to exist, must have arisen from a mistaken construction of the Regulations giving these powers to the nabob; and as his decisions are stated to be generally equitable, there is still less necessity of change.

4. I am directed to take this opportunity of acknowledging the receipt of your letter of the 16th ultimo. The Court are of opinion that unless the defendant in his first pleading (the juwub-i-dawa) pleads his privilege as a dependant of the nabob, he cannot afterwards assert it. This rule will, the Court observe, effectually check the practice mentioned by you of delaying the administration of justice, by requesting a reference of the case when it has nearly been brought to a conclusion.

The Presidency Court, on the 29th November, 1833, *concurred in this construction.*

November 8th, 1833.

To the Judge of Zillah Mynpooree, dated 22d December, 1833.

No. 844.
1825 Reg VII. Sec. 8. Cl 6. Sec 4. Cl 4 and 5. C. O S D A 19th July, 1833.

I am directed by the Court of Sudder Dewanny Adawlut for the Western Provinces to acknowledge the receipt of a letter from you under date the 15th instant, requesting to know whether the following expression in the circular letter of the 19th July, 1833, (No. 90 of vol. 2, C. O. S. D. A.) "or objections made to the sale of property within the "period of the proclamation," is to be understood as including objections made by defendants, against whom the process has been taken out, to the sale of their own property, or those only which may be urged against such sale by claimants of the property or other individuals.

2. In reply, I am directed to acquaint you that the expression in question must be considered equally applicable to defendants as to other individuals, who may have objections to advance to the disposal of property advertised for sale by public auction in satisfaction of a decree of court.

The Presidency Court, on the 6th December, 1833, concurred in this construction.

November 22d, 1833.

From the Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 29th November, 1833.

No. 845.
1833 Reg. II. Sec 5.

I am directed by the Court to request that you will obtain the opinion of the judges of the Presidency Court on a question which has arisen, as to the competency of a single judge of the Sudder Dewanny Adawlut to reject a petition for a special appeal, transferred under the provisions of Section 5, Regulation II. 1833, from a Provincial Court on its abolition to the file of the Sudder Dewanny Adawlut, on which a judge of the former court has recorded his opinion in favor of the admission of the appeal. On a consideration of the Section of the Regulation above quoted, particularly of that part of it which provides "that the judges of the Court of Suddor Dewanny Adawlut are "hereby empowered and required to dispose of cases of this nature under the general "powers with which they are vested, in the same manner as though they had been regularly cognizable by, and referred to, or instituted before them,"—it appears to the Court that a single judge of the Sudder Dewanny Adawlut is competent to exercise such power, whenever it may appear to him that no sufficient grounds exist for the admission of a special appeal, and that the opinion recorded by the judge of the Provincial Court is manifestly erroneous and at variance with the rules prescribed for the admission of a special appeal.

The Presidency Court, on the 20th December, 1833, concurred in this construction.

November 29th, 1833.

No. 846.
1814 Reg XXIII Sec. 15, Cl 3.

Resolution of the Presidency Court of Sudder Dewanny Adawlut, dated 6th December, 1833.

A doubt having arisen as to whether an appeal does or does not lie to the Court of Sudder Dewanny Adawlut from the order of a zillah or city judge, dismissing a vakeel

of a moonsiff's court; the Court are of opinion that such appeal does not lie: for the judges were declared competent by Clause 8, Section 15, Regulation XXIII. 1814, to remove such vakeels (without a reference to any other authority being specifically required) while they were required by Clause 2, Section 10, Regulation XXVII. 1814, to submit a report for the orders of the Provincial Court, whenever they might consider a vakeel attached to their own courts, or to those of the registers or sudder ameens, worthy of dismissal from office.

The Western Court, on the 27th December, 1833, concurred in this construction.

December 6th, 1833.

To the Session Judge of Zillah Chittagong, dated 13th December, 1833.

No. 847.

1793. Reg IX Sec. 47. 1803. Reg. VII. Sec. 15, Cl. 1.

It having been brought to the notice of the Court, that you have occasionally issued your warrants, for the execution of sentences passed upon prisoners committed for trial by the joint magistrates subordinate to the magistrate of Chittagong, to the joint magistrates themselves, I am directed to inform you that all warrants should be addressed to the chief magisterial authority of the district, whether he be denominated magistrate, as in the case of Chittagong, or joint magistrate, as in that of Noacolly.

December 13th, 1833.

From the Judge of City Moorshedabad to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 2d September, 1833.

No. 848.

Suits by or against the European manager of a native minor's estate, are to be tried in the courts to which such suits would be referrible if natives were parties to them.

I have the honor to acknowledge the receipt of your letter dated the 23d ultimo, informing me that the prohibition has been suspended in the case of Mr. Sutherland, which prevents European British subjects from becoming managers of land under the Court of Wards; I beg therefore to be favored with the instructions of the Sudder Dewanny Adawlut, on the points noticed in my letter, dated 14th May, 1833; viz.

1st. Are suits in which Mr. Sutherland is a party as manager, to be retained on the file of the judge whatever be the amount, as those of a European?

2d. Does an appeal lie to the Supreme Court from the decisions passed here, as in cases where Europeans are parties?

To the Judge of City Moorshedabad, dated 13th December, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 2d September last, submitting two questions, relating to suits in which Mr. Sutherland, in his capacity of manager of the estates of the late Raja Hurinath is a party, and in conformity to the decision of Government, communicated to the Court under date the 2d instant, to transmit to you the following replies.

2. *To the first question.* The appointment of Mr. Sutherland to the management of a native minor's estate, cannot be considered to confer on such native the rights and

privileges of a European British subject, which only attach to the manager personally Suits brought forward, either by or against Mr. Sutherland in his capacity of manager, not being personal suits, should be regarded as suits instituted on the part of or against a native, and ought to be tried, like every other suit in which natives are parties, in the court by which, from its amount, it may be cognizable. The necessity of adhering to the usual routine in such cases is the more apparent from the inconvenience which would result from an opposite course; the appeals in numerous small suits of an extremely small value would, if the cases were decided in the first instance by the judge be thrown in the Courts of Sudder Dewanny Adawlut, which are already sufficiently burdened with arrears.

3. *To the second question.* It would rest with the Supreme Court either to admit or reject appeals of the nature alluded to, as may appear to them just and proper under the acts of parliament bearing on the point.

This construction was given in conformity to the opinions contained in the letter of the Western Court, dated 18th October, 1833, and the Secretary to the Supreme Government, dated 2d December, 1833.

December 13th, 1833.

To the Register of the Sudder Dewanny Adawlut, Western Provinces, dated 20th December, 1833.

No. 849.

Showing the practice of the Court when one of several parties against whom a decree has been given appeals against it.

I am directed to acknowledge the receipt of your letter of the 14th September, 1832, and its enclosures, requesting to be informed whether any and what rule has been adopted in the Presidency Court, with regard to the following point:—"A decision is passed "against two or more defendants in a suit; can any one of these defendants prefer an "appeal from that decision in so far only as it includes his own share of the property "litigated? or is it incumbent on him to appeal from the whole decree, including the "whole of the property in dispute?"

2. In reply, I am directed to observe that it appears from the records of the Court to have been the practice, when there have been several defendants, and the decree has been passed against all, without specification of what is due from each, for the person among them, who first appeals to file his petition of appeal on the full amount of the decree; and the appeal would not be admitted, were he to write it on a stamp of a value proportioned to his own alleged share.

3. If it be stated in the decree, or can be ascertained from the proceedings, what is the share of each defendant, each may appeal separately on his own share only.

4. This practice has lately been modified by Mr. Shakespear, with the concurrence of his colleagues. On the 9th May last, he directed the lower court, in a case in which the separate liabilities of several defendants holding under distinct titles, were not mentioned in the decree, to amend the same, by inserting the amount due by each defendant,

in order that the parties concerned might not be debarred from their individual right of appeal.

5. Copies of roobukaries and other papers in the cases above alluded to, are forwarded for the perusal of the Western Court.

December 20th, 1833.

To the Commissioner of Circuit for the 7th Division, dated 20th December, 1833.

No. 850

1797 Reg XIII Sec. 2. 1803 Reg XII Sec 18.

I am directed by the Court to acknowledge the receipt of a letter from you under date the 9th instant, with its enclosure from the magistrate of Banda, on the subject of the administration of the prescribed oath of office to an assistant.

2. In reply, I am directed to communicate to you the opinion of the Court that under the provisions of Section 2, Regulation XIII. 1797, an assistant to a magistrate on his removal from one district to another, whether under the orders of Government or the commissioner of the division, should take the prescribed oath of office before the magistrate of the zillah to which he may have been newly appointed, and that the magistrate is in such cases competent, and indeed required by the provisions of the foregoing enactment, to administer it to him without any special orders from Government on the subject.

The Presidency Court, on the 3d January, 1834, *concurred in this construction.*

December 20th, 1833.

To the Officiating Magistrate of Zillah Burdwan, dated 26th December, 1833.

No 851

1793 Reg XXII Sec 16 1803 Reg XXXV Sec 28

The Court have had before them a representation from Mr. Patton, magistrate of Beerbhoom, complaining of your conduct in arresting Busharut Allee Khan, darogha of thanna Keogram, in his district, while in the execution of his duty in serving a warrant issued to him by Mr. Patton.

The Court observe that the magistrate of Beerbhoom was fully authorized by Section 16, Regulation XXII. 1793, to issue the warrant he did, and that supposing any charge to have been preferred or pending against the darogha in your court, you should have postponed requiring his attendance to answer it, until he had completed the duty on which he was deputed by his immediate superior. They therefore consider you to have acted unwarrantably on the occasion, and direct me to communicate to you their expectation that you will exercise a more sound discretion in future.

December 26th, 1833.

To the Judge of Zillah Futtehpore, dated 27th December, 1833.

No 852.

1814 Reg XXVII Sec 11

I am directed to acknowledge the receipt of a letter from you under date the 18th instant, requesting to be informed whether a vakalutnamah, executed by a decree-

holder for the conduct of an original suit when pending in your court, is sufficient authority for the vakeel therein appointed to superintend the execution of the decree on its being confirmed in appeal.

2. In reply, I am directed to communicate to you the opinion of the Court that the Section of the Regulation quoted by you, (Section 34, Regulation XXVII. 1814,) is conclusive on the point in question, viz. that a vakalutnamah executed on the original institution of a suit, unless cancelled by the party or otherwise set aside, must be considered operative and in full force "until the final judgment shall have been enforced."

The Presidency Court, on the 17th January, 1834, concurred in this construction.

December 27th, 1833.

From the Judge of Zillah Bareilly, dated 7th December, 1833.

No. 853.

1803. Reg. XXVII Sec 10.

A difference of opinion existing as to the competency of the civil court to stay the collector's proceedings against a malgoozar, pending investigation of a suit instituted to dispute the demand, I have the honor to submit the following question to the Court for their instructions.

2. Is the civil court competent to issue an injunction to the collector to discharge an individual from personal restraint, and to prohibit the sale of real property on a petition being filed *previous* to the advertisement of the defaulter's lands for sale, and on *good security* having been furnished to fulfil the award of the court?

3. It appears to me that Clause 2, Section 16, Regulation XXVII. 1803, (which, as far as I can discover, has nowhere been rescinded,) warrants the court to act in the affirmative; and that Section 10 of Regulation XI. of 1822, prescribing a deposit of cash, is only applicable where an estate has been duly advertized for sale by the revenue authorities prior to the institution of the suit in court.

To the Judge of Zillah Bareilly, dated 27th December, 1833.

I am directed to acknowledge the receipt of a letter from you under date the 7th instant, submitting a question as to whether the civil court is competent to issue an injunction to the collector to stay the sale of the real property of a defaulting malgoozar, pending the investigation of a suit instituted to dispute the demand, on a petition being filed previously to the advertisement of the defaulter's lands for sale, and on good security having been furnished to fulfil the award of the court.

2. In reply, I am directed to communicate to you the opinion of the Court, that the civil court is not competent to exercise such power.

The Presidency Court, on the 17th January, 1834, concurred in this construction.

December 27th, 1833.

854.
10 January, 1834.

From the Judge of Zillah Mynpooree to the Officiating Register to the Sudder Dewanny Adawlut for the Western Provinces, dated 30th December, 1833.

No. 854.
1806.
Reg. II
Secs. 2 and 3.

I herewith transmit copies of a plaint filed by Lalmun in the cutcherry of the moonsiff of Mynpooree for thirty rupees, fourteen annas, and six pie, due from Chetram, and of two urzees, one from the moonsiff of Mynpooree, dated the 3d September, 1833, and the other from the cutwal of this town, dated 9th October, 1833, and request you will lay them before the Court of Sudder Dewanny Adawlut.

2. The circumstances of the case appear to be, that Chetram Marwaree, formerly resided at Moukumgunj, a town adjoining Mynpooree, where he had two houses; one he mortgaged to Usghur Ullee, a vakeel of this court, and the other he sold to a person named Lulloo; he then went to his own country, leaving some property locked up in a room in the latter house, the key of which he entrusted to Gunesh muhajun. Some time after his departure, Lulloo, concluding that he was either dead or would never return, took the key from Gunesh and gave it to the cutwal, and asked him to open the room and see what things were in it. The cutwal accordingly took an inventory of the property and sent it to the magistrate and Lalmun instituted a regular suit to recover the amount of his debt from the property. The moonsiff caused ishtyars to be stuck up in his own cutcherry, and on the door of both the houses which formerly belonged to Chetram, and applied to me to obtain an inventory of the property from the Foujdaree Court. On my application the magistrate ordered the cutwal to deliver over the property to the nazir of my court, who has now charge of it; and I have directed the moonsiff not to proceed with the cause until further orders. The object of this reference is—1st, to ascertain whether a regular suit can be instituted, against property where there is no defendant to be sued? and 2d, whether, with reference to the seventh clause of Section 16, Regulation III. of 1803, a judge on a summary investigation may at once satisfy the just demands of creditors against unclaimed property under charge of the court, or whether he must abstain from making any disbursement until the expiration of a twelvemonths' proclamation, and the subsequent receipt of the orders of the Governor General in Council?

To the Judge of Zillah Mynpooree, dated 10th January, 1834.

I am directed by the Court to acknowledge the receipt of a letter from you under date the 30th ultimo, with its Persian enclosures in the case of Lalmun *versus* Chetram Marwaree; and to acquaint you in reply that as the cause of action would seem to have originated in your jurisdiction, and property belonging to the defendant is stated to be forthcoming, the case in question appears to be cognizable, and should be proceeded on in the manner laid down in Sections 2 and 3, Regulation II. 1806.

2. With regard to your second question I am directed to observe that the Section of the Regulation cited by you does not appear applicable, as you do not state that any

information has been received of the death of the individual referred to, or, if deceased, that he died intestate.

The Presidency Court, on the 31st January, 1834, *concurred in this construction.*

January 10th, 1834.

To the Officiating Commissioner of Circuit for the 15th Division, dated 17th January, 1834.

No. 855.
1824
Reg XV

The Court having had before them your letter of the 3d instant, requesting the opinions of the judges as to whether Regulation XV. 1824 is applicable to disputes for possession of fisheries, direct me to inform you that by the construction of the Court dated 28th February, 1807, (No. 28, page 8 of the construction book, vol. 1,) complaints of violent dispossession from fisheries, tanks, &c. may be taken up under Regulation XLIX. 1793, consequently they are cognizable by the criminal courts under Regulation XV. 1824.

The Western Court, on the 14th February, 1834, *concurred in this construction.*

January 17th, 1834.

To the Judge of Zillah Dacca, dated 24th January, 1834.

No. 856.

Mortgaged property can be sold in execution of a decree obtained by other than the mortgagee, with a reservation of the rights and interests of the mortgagee.

I am directed by the Court to acknowledge the receipt of your letter of the 5th ultimo, requesting permission to review the orders passed in the following cases:

Elizabeth Bullard, plaintiff,
versus
Akr Mahomed, defendant;
The Revd. M. Shepherd, petitioner,
versus
Kishen Chunder Doss;
and
Ram Rutton Chowdry,
versus
Kishen Chunder Doss.

2. The Court have in several instances ruled that mortgaged property can be sold in execution of decrees obtained by other than the mortgagee, with a reservation of the rights and interests of the mortgagee, as you will perceive by the accompanying copies of roobukarees as per margin,* and accordingly authorize you to review the orders in question with a view to your passing such as may be in conformity with that principle.

* Roob. of 31st March and 5th May, 1830, in the case of Mutthoor Mohun Ghose, petitioner.
Do of 16th March and 17th June, 1830, in the case of Mr. C. Reed and Behari Lal.
Do. of 21st January, 1833, in the case of Moorari Dhur Luskku
Do. of 14th Jan., 1833, in the case of Pud Lochun Soor.

January 24th, 1834.

857.
24 January, 1834

From the Session Judge of Zillah Cuttack to the Register of the Nizamut Adawlut, dated 3d January, 1834.

No. 857.
1818
Reg. IV Sec. 12.
Circular Orders
10th July 1830, 23d March, 1832, and 22d Feb. 1833

I have the honor to submit in conformity with Section 9 of Regulation VII. of 1831, the accompanying proceedings as noted in the margin* for the orders of the Nizamut Adawlut.

2. The circumstances which led to this reference are as follows. On a perusal of the acting magistrate's original proceedings of commitment (No. 1) it appeared, that he had committed Nubbeen Patur for wilful murder and theft, and Juggoo Sahoo and Nund Sahoo for receiving the stolen property, making use of the word "Thangeedaree."—Considering the charge against the latter two prisoners, at variance with the Circular Orders of the Nizamut Adawlut of the 16th of July, 1830, 23d of March, 1832, and 22d February last, I returned the calendar and foujdaree record to the acting magistrate, accompanied by the proceedings of this court (No. 2), dated the 4th instant, directing him to commit Juggoo Sahoo and Nund Sahoo, for "knowingly receiving stolen property,"—if he thought the crime for which he made use of the word "Thangeedaree" (which appears to me an improper term when a specific charge should be made) was proved against them. His proceeding in reply (No. 3) was, declining to conform to my instructions, and therein he has stated it to be his opinion that the crime of having possession of the property of the deceased, knowing how it had been obtained was *not* proved; but as he was anxious that Juggoo Sahoo and Nund Sahoo should be made an example of, he requested that if I could not convict them, I would send them back to him for punishment. I then repeated my order, for the reasons stated in my proceeding of the 5th instant (No. 4), upon which Mr. Pringle instead of obeying my requisition, held another proceeding on the 7th instant (No. 5), by which he annulled his commitments of the 30th of November last, recommitted Nubbeen Patur on the original charge of wilful murder attended with theft, and not only acquitted Juggoo Sahoo and Nund Sahoo, but made them witnesses for the prosecution.

* 1 Proceeding of the acting magistrate, dated 30th November, 1833.
2 Ditto ditto Sessions Court, 4th December, 1833.
3. Ditto ditto acting magistrate, 5th December, 1833.
4. Ditto ditto Sessions Court, 5th December, 1833
5 Ditto ditto acting magistrate, 7th December, 1833
6 Abstract from the proceedings of the Sessions Court on the trial of Nubbeen Patur, 12th December, 1833

4. Mr. Pringle in his proceedings of the 30th November last and 5th instant has declared himself competent to punish the receivers of the stolen property in this case, but I am of opinion that had he done so it would have been acting contrary to Section 4, Regulation XII. of 1818.

5. I have completed the trial of Nubbeen Patur, but have postponed it pending this reference, as it is not clear whether I ought to take the depositions of Juggoo Sahoo and Nund Sahoo on oath, or not; for as they were in the first instance committed to take their trial before this court, the magistrate's subsequent proceeding of the 7th instant may be declared illegal, and on being reversed by the superior Court, I may be directed to try them for knowingly having stolen property in their possession.

6. The points on which I beg to be favored with the opinion and orders of the Nizamut Adawlut for my future guidance are as follows:

First. Whether the orders issued by me on the 4th and 5th instant were in conformity with the Circular Orders of the Nizamut Adawlut contained in your letter of the 23d of March, 1832, and 22d of February last or not?

Second. Whether a magistrate can legally, after committing a prisoner for trial to the sessions court, quash his own commitment, release one or more of the prisoners, and make him or them evidence for the prosecution in the same trial?

Third. Whether in commitments for receiving stolen property and keeping it (knowing how it was obtained) it would not be advisable to make use of the words دیدہ و دانستہ گرفتن و داشتن مال سرقہ rather than the word تہانکي داري, which appears to me to be a vague mode of expression in a charge which ought to be clear and well defined?

Fourth. Whether I am to take the depositions of Nund Sahoo and Juggoo Sahoo as witnesses on oath, or is the acting magistrate to be directed to re-commit them for trial?

7. If they are tried they will I have no doubt be acquitted, as on a perusal of the record of the acting magistrate's proceedings there appears no evidence to prove or even to presume that they wilfully transgressed.

To the Session Judge of Zillah Cuttack, dated 24th January, 1834.

I am directed by the Court to acknowledge the receipt of your letter of the 3d instant, and to communicate to you the following replies to the questions proposed.

2. *First.* Your orders of the 4th and 5th instant were in conformity with the Circular Orders of the 23d March, 1832, and 22d February, 1833, which, as well as that of the 16th July, 1830, (paragraphs 15, 16, 17,) require that in commitments the charge should be stated as explicitly as possible.

3. *Second.* A magistrate, after committing a prisoner for trial, cannot legally quash his commitment, release one or more of the prisoners, and make him or them evidence for the prosecution in the same trial.

4. *Third.* In commitments for knowingly receiving or keeping stolen or plundered property, the words دیدہ و دانستہ گرفتن و داشتن مال سرقہ or معروفہ, as the case may be, should be used and not the word تہانکي داري.

5. *Fourth.* The order of the magistrate making Nund Sahoo and Juggoo Sahoo witnesses for the prosecution being irregular, the Court annul it, and desire that he will conform to the orders issued by you, and commit those persons on the charge of "knowingly receiving stolen property." You will then proceed on the trial, and, in the event of your acquitting them, it will be competent to you to postpone the case as regards the remaining prisoner, and direct the magistrate to take the evidence of those two persons on oath under the provisions of Clause 2, Section 5, Regulation X. 1824, should you deem that measure necessary to the ends of justice.

857—859
24 Jan
7 Feb } 1834

6. With advertence to your 4th paragraph, I am directed to state, for the information of the magistrate, that he is not competent to punish receivers of stolen property in any case, the aggravating circumstances of which render the commitment for trial of any of the prisoners necessary, but that he must commit them for trial under the rule contained in Clause 2, Section 4, Regulation XII. 1818.

January 24th, 1834.

To the Commissioner of Dehli, dated 31st January, 1834.

No 858.
1810
Reg XVI Sec 9

I am directed by the Court to acknowledge the receipt of your letter of the 15th instant, with its enclosures.

2. In reply, I am directed to inform you that under the circular order of Government of the 30th November, 1831, paragraphs 10 and 11, it would appear that if a joint magistrate be acting in subordination to his principal without independant authority, his orders are appealable in the first instance to the magistrate, the commissioner being however at all times competent to call for the proceedings of any of his subordinates: but if the joint magistrate be acting independently of the magistrate, by which must be understood if he have received separate charge of a portion of a district or a particular department, his orders are appealable to the commissioner direct. This explanation appears to correspond nearly with that contained in your letter; you will be pleased to communicate it to the magistrate of Hissar for his future guidance.

The Presidency Court, on the 14th February, 1834, *concurred in this construction.*

January 31st, 1834.

From the Judge of Zillah Dacca to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 21st January, 1834.

No 859
1814
Reg XXIII Sec 27

I request you will submit to the judges of the Sudder Dewanny Adawlut my enquiry, whether in their opinion the new moonsiffs are competent to fine plaintiffs for not proceeding in their suits?

2. The Court's letter of the 21st September, 1832, paragraph 3, refers indeed to Section 12, Regulation XXVI. 1814, but it subsequently specifies, as the consequence of neglect, the dismissal of their suits, or trial in their absence; and Clause 3d, Section 6, Regulation V. 1831, grants the new moonsiffs only the same powers as the old, in regard to the practice of their courts. I therefore wish a definite opinion on the above question.

To the Judge of Zillah Dacca, dated 7th February, 1834.

I am directed by the Court to acknowledge the receipt of your letter of the 21st ultimo, No. 37, and in reply to point out that the rules for the guidance of moonsiffs in cases of default are contained in Section 27, Regulation XXIII. of 1814, and do not vest

them with the power of fining parties in suits for neglect, and that Section 12, Regulation XXVI. 1814, alluded to in the Circular Order of the 21st September, 1832, (which you have quoted as dated 21st September, 1833,) was intended to refer to principal and other sudder ameens, to whom its provisions must, under Section 73, Regulation XXIII. 1814, be considered applicable.

February 7th, 1834.

From the Judge of Zillah Mynpooree to the Officiating Register to the Sudder Dewanny Adawlut, Western Provinces, dated 15th January, 1834.

No. 860.

1790. Reg. VII. Sec. 15. 1831. Reg VIII.

I request the favor of your laying before the Court of Sudder Dewanny Adawlut Western Provinces, the papers noted in the margin,* and soliciting their opinion whether a landholder or other person empowered to sue for arrears of land rent is at liberty to sue, either by a regular or summary suit, all the defaulters of a village collectively.

2. Prior to the transfer of the summary suits to the revenue officers, I only allowed such defaulters to be included in one summary suit as conjointly cultivated any parcel of land, and were conjointly answerable for the rent, and although the Sudder Board of Revenue in their instructions of the 22d February, 1833, to the subordinate revenue authorities state the practice of the courts generally in the Western Provinces to be otherwise, I think there can be no doubt that the practice, if it does exist, is illegal. If the principal is admitted that a suitor may proceed against the defaulters of a village collectively, of course the number of the defendants can only be limited by the number of inhabitants of a village, who in some instances may amount to hundreds, and why the option is to be left to the suitors, and the convenience of the defendants is in no way to be consulted, I am at a loss to conceive. The suitor in such cases being generally in good circumstances and the defendants the reverse, I think facilities ought rather to be given them to disprove demands if unjust than obstacles thrown in their way. In cases where the suitor proceeds collectively, and the defendants reply separately, the defence of each varying, there become as many branches as there have been different causes of action united, and the witnesses of the plaintiff, who will generally be the same to prove all the claims, cannot possibly be questioned minutely by each defendant with regard to the demand made against him; the defendants also, probably, will not all reply at the same time; some will have recourse to all the delay which the forms of the court admit of, others again may be desirous to have the matter in dispute settled as speedily as possible, especially if they are obliged to remain in attendance themselves from inability to appoint a vakeel. The instructions to my moonsiffs have always been not to admit of a cause of action being split into two, nor of two or three causes of action distinct in themselves being united in one suit.

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* A letter from Mr Edgeworth, assistant to the commissioner of Furruckabad to the address of Mr. Fraser collector of this district, dated 5th March, 1833.

A letter from Mr Deedes, officiating secretary to the Sudder Board of Revenue, W. P., to the commissioner of Furruckabad, dated 22d February, 1833.

J. This reference has originated from the following circumstances.—Petumber Singh instituted a suit against Bharamul and others for arrears of rent in the cutcherry of the collector; the suit was dismissed; he then instituted a regular suit in this court to obtain, in reversal of the collector's summary award, the amount of rent with costs of the summary suit. This cause, on the promulgation of Regulation VII. 1832, was transferred to the moonsiff of Shekoabad. The defendants there objected to a suit being instituted against them collectively, as contrary to the practice of this court; afterwards on the plaintiff representing that instructions had been issued to the collectors from the Sudder Board of Revenue sanctioning the practice, he made a reference to me on the subject:—the plaintiff further urged as a reason for instituting the suit against the defendants collectively that he was obliged to do so, as the summary suit to reverse the decision of which the regular suit was instituted, had been admitted in that form. The last plea of the plaintiff is not in my opinion valid, although I think that it is desirable that the same rules of practice on this point should obtain in both the judicial and revenue courts, as it is optional with claimants to proceed against defaulters in either, and suits are transferrible from one jurisdiction to the other.

To the Judge of Zillah Mynpooree, dated 7th February, 1834.

I am directed by the Court to acknowledge the receipt of your letter of the 15th ultimo, with its enclosures.

2. In reply, I am directed to inform you that the practice described in the latter part of your 2d paragraph, of allowing a single suit to be instituted against a large portion of the inhabitants of a village for arrears of rent, when such inhabitants are not otherwise connected than as dwelling in the same village, and do not jointly cultivate any piece of land, is irregular and objectionable; nor does it appear to the Court as sufficient reason that the original summary suit was admitted in that shape. The limit laid down in the first part of the same paragraph, with regard to including several ryots in one suit, is in the Court's opinion judicious, and should be invariably observed.

The Presidency Court, on the 28th February, 1834, *concurred in this construction.*

February 7th, 1834.

To the Judge of Zillah Mynpooree, dated 7th February, 1834.

No. 861.
1814.
Reg. XXIII Secs. 52 and 59. 1832
Reg VII. Secs. 5 and 7.

I am directed by the Court to acknowledge the receipt of your letter of the 10th January, containing several queries on points connected with Regulation V. 1831, and to send you the following answers.

2. *Question 1st.*—Decrees passed in the lower courts, and confirmed in appeal by the judge after summoning the respondent, must be considered as decrees of the judge's court, and be executed under the rules in force for the execution of such decrees.

3. *Question 2d.*—Moonsiffs are not entitled to receive commission on sales conducted in execution of their own decrees, but only on those which they hold in execution of the decrees of other courts.

4. *Question 3d.*—The peons attached to the courts of the moonsiffs under the provisions of Section 5, Regulation VII. 1832, are intended exclusively for the execution of judicial processes, and should not be employed in the distraint and sale of property for arrears of rent.

5. *Question 4th.*—Petitions filed in consequence of proclamations under Clause 3, Section 59, Regulation XXIII. 1831, (and the corresponding enactments for the courts of sudder ameens, principal sudder ameens and moonsiffs,) must be considered as miscellaneous petitions, and bear the stamp fixed by Schedule B, for such petitions in the courts in which they are preferred.

The Presidency Court, on the 28th February, 1834, concurred in this construction.

February 7th, 1834.

From the Judge of Zillah Mynpooree to the Officiating Register to the Sudder Dewanny Adawlut, Western Provinces, dated 23d January, 1834.

No. 862. Reg VIII. 1831.

With reference to your circular letter of the 15th November, relative to the description of suits cognizable by revenue officers under the provisions of Regulation VIII. 1831, I request you will solicit for me information from the Court of Sudder Dewanny Adawlut, Western Provinces, on the following point.

2. In the event of a suit being instituted in the zillah court or that of a moonsiff by a resident cultivator, to obtain a reversal of a summary decision passed by a collector adjudging a balance against him and ejecting him from his jote as a defaulter, is the value of the suit to be estimated by the amount of rent in dispute, or by the selling value of the land or both? The claim is to disprove the balance and regain possession; but as the point originally at issue in the summary suit was the justness or otherwise of the demand of rent, and the ejectment or non-ejectment of the cultivator rested solely on the defendant being deemed a defaulter or otherwise, I conceive that the amount of the suit should be estimated by the amount of balance in litigation.

To the Judge of Zillah Mynpooree, dated 7th February, 1834.

I am directed by the Court to acknowledge the receipt of your letter of the 23d ultimo.

2. In reply, I am directed to inform you that in suits of the nature described in the 2d paragraph of your communication, viz. suits instituted in a zillah court or that of a moonsiff by a resident cultivator, to obtain a reversal of a summary decision passed by a collector adjudging a balance against him and ejecting him as a defaulter, the value of the suit should be estimated at the amount of rent in dispute, or, in other terms, at the sum sued for in the first instance.

The Presidency Court, on the 28th February, 1834, concurred in this construction.

February 7th, 1834.

To the Judge of Zillah Tirhoot, dated 14th February, 1834.

No. 863.
1814
Reg. XXVI. Sec 8
1831
Reg V Sec 10. Cl 3.
Para 10. Circular Orders, 1st Nov. 1838, No. 91.

I am directed by the Court to acknowledge the receipt of your letter of the 20th ultimo, and, in reply to the question contained in the first paragraph, to refer you to the 5th paragraph of their Circular Order of the 28th June last, and to convey to you their opinion that a practice similar to that prescribed in the case of appeals to their Court, in regard to the demand of security for the costs of appeal, may be followed by the zillah judges.

2. The Court direct me to observe that it requires a positive enactment to alter the rules prescribed for the admission of appeals, which allow the petitions to be filed without the *mujibaat* or reasons for appealing; so that they are not competent to authorise you to proceed in the manner suggested in your second paragraph *

3. With reference to the third paragraph, I am directed to observe that though under the construction contained in the tenth paragraph of the letter circulated on the 1st November last, the moonsiffs may depute ameens to make local investigations in regular suits pending before them, they cannot depute a mohurrer or other person to make such as they themselves may be required to make by the different courts. If the moonsiff cannot leave his station for the purpose of making such investigations, without materially interfering with his more special duties, he should represent the circumstance to the judge, who can depute any other person to perform the duty.

February 14th, 1834.

From the Acting Superintendant of Tributary Mehals at Cuttack to the Register of the Sudder Dewanny Adawlut, dated 28th January, 1834.

No. 864.
1816
Reg XI.

A suit, for the recovery of certain lands situated on the borders or within the tributary estate of Neelghurry, but decreed after a summary investigation by the magistrate at Balasore to be within that estate, has been preferred to me as superintendant of tributary mehals by a zumindar subject to the Regulations. As Regulation XI. of 1816, does not provide for such cases, and having my doubts whether this is the proper tribunal to which the plaintiff should apply, I have to request that you will obtain the opinion of the Court of Sudder Dewanny Adawlut whether I should admit the suit on my file or refer the petitioner to the zillah court.

To the Acting Superintendant of Tributary Mehals of Cuttack, dated 14th February, 1834.

In reply to your letter of the 28th ultimo, No. 88, I am directed by the Court to inform you that as the summary enquiry by the magistrate of Balasore appears to have ascertained that the contested lands lie within the Neelghurry estate, they are of opinion that the assumption should be maintained until the contrary be shewn by a more formal enquiry, which enquiry should be conducted by you on the admission of the suit referred to in your letter.

February 14th, 1834.

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* That is, by compelling appellants to file copies of decrees and reasons of appeal with their petitions of appeal

To the Commissioner of the Saugor and Nerbudda Territories, dated 14th February, 1834.

No. 865.

1817
Reg XVII Sec. 6, Cl. 4

I am directed by the Court to acknowledge the receipt of your letter of the 30th ultimo.

2. In reply, I am directed to inform you that as the crime of incest is of the nature of an offence against society and not of a private wrong, there is no reason why the offender in question should not be prosecuted on the part of the Government; on this head I am directed to refer you to Clause 4, Section 6, Regulation XVII. 1817, which requires in cases of adultery that a woman shall be prosecuted by her husband, but leaves other kinds of *zinna* (under which term incest is included in the preamble,) to be dealt with in the usual method.

The Presidency Court, on the 28th February, 1834, concurred in this construction.

February 14th, 1834.

From the Judge of Zillah Furruckabad to the Officiating Register of the Sudder Dewanny Adawlut, Western Provinces, dated 27th January, 1834.

No. 866.

1793.
Reg III Sec. 8.
1803
Reg. II. Sec. 5.

I would beg to solicit the construction of the Court on the following point.

2. In Regulation II. of 1803, Section 5, it is prescribed as follows. The zillah courts are empowered, &c. &c. "or in all other cases, the cause of action shall have "arisen, or the defendant at the time when the suit may be commenced shall reside as a "fixed inhabitant within the limits of the zillah over which their jurisdiction may extend."

Now cases of the annexed nature are not uncommon:

A, an indigo planter resident in the Mynpooree district, makes an advance of cash to B, a zumeendar, resident of Khanpoor district, taking a bond and agreement to deliver a certain portion of produce at C, another factory belonging to A, situated in the Furruckabad district, the bond being written and the advance made at A's permanent residence. B fails in this contract, either by not delivering any plant or by delivering less than the stipulated quantity or of an inferior quality, at factory C, in this case plaintiff A may sue B, either in Mynpooree or Khanpoor; but the question is, can he do so in Furruckabad, can the cause of action be construed to have arisen in that district?

3. I have no case of this nature before the court, but an indigo planter has brought it to my notice, as desirable to have the point settled; assuring me that he has had decrees given him in such cases; and that at other times his suit has been dismissed on the grounds that the matter did not lie in the jurisdiction of the third court in which the delivered factory was situated. An analogous case is, when two houses of business situated in two different districts have transactions of any mercantile nature with each other, which lead to a suit in court. It has been customary to allow either party to sue the other in either district, the transactions being held to have taken place in both.

4. I would beg to suggest the expediency of an order from the Court on the subject.

To the Judge of Zillah Furruckabad, dated 14th February, 1834.

I am directed by the Court to acknowledge the receipt of your letter of the 27th ultimo, requesting the opinion of the Court regarding the application of the provisions of Section 5, Regulation II. of 1803.

2. In reply, I am directed to inform you that the Court concur with you with regard to the case in question; in which the plaintiff A may sue B, either in Mynpooree where the cause of action arose, or Khanpoor in which the defendant B resided at the time of instituting the suit. The failure of delivery at Furruckabad is not a circumstance which, under the Regulation, would give jurisdiction to the court in that district.

The Presidency Court, on the 28th February, 1834, *concurred in this construction.*

February 14th, 1834.

From the Judge of Zillah Cuttack to the Register of the Sudder Dewanny Adawlut, dated 3d February, 1834.

No. 867.
1831
Reg VIII Sec. 8.

I beg to be informed if, in the opinion of the Court of Sudder Dewanny Adawlut, the civil courts are competent, under Section 8, Regulation VIII. of 1831, to receive regular suits for arrears of rent, on paper bearing a stamp of one-fourth the prescribed value—if under the existing Regulations they would have been cognizable as summary suits, or if the suits should in the first instance be preferred to the collector under Section 7, and be by him referred to the judicial authorities under Clause first, Section 9 of the same enactment before the courts can admit them.

To the Judge of Zillah Cuttack, dated 14th February, 1834.

I am directed to acknowledge the receipt of your letter of the 3d instant, and in reply to inform you that the Court perceive nothing in the provisions of Section 8, Regulation VIII. 1831, to prevent the civil courts from receiving regular suits for rent under the circumstances stated by you, on stampt paper of one-fourth the first prescribed value.

The Western Court, on the 26th March, 1834, *concurred in this construction.*

February 14th, 1834.

From the Judge of Zillah Beerbhoom to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 29th July, 1833.

No. 868.

A decree being given for half the amount sued for, and the appellate court, on the appeal of the defendant, being of opinion that the whole should have been decreed, held that the decree of the lower court cannot be amended in favor of the plaintiff, unless he has urged objections to it.

I beg to be favored with the instruction of the Court on the following points of practice:

A sues B for 1,000 rupees, and obtains a decree for 500 only: B dissatisfied with the decision, appeals with a view to its entire reversal. A, now the respondent, does not appear on the usual notice and proclamation, and the appeal proceeds exparte. On a consideration of the pleadings and proofs filed in the original suit, the court trying the appeal is of opinion that the whole 1,000 rupees should have been decreed to A; under

these circumstances, should the appeal court content itself with simply dismissing the appeal, thus confirming the original decision, or should it reverse the decision and pass a decree in favor of A for the whole sum?

Again, supposing the same circumstances with this difference only, that the respondent does not appear, what course is then to be pursued?

Or generally in regular appeals should a suit be decided simply on its own merits, as they are to be gathered from the pleadings and proof filed in the original suit and from any further evidence adduced in appeal, without any regard as to which party appeals and whether the opposite party attends or not, or should the latter circumstances also be taken into account in the adjudication of it?

To the Judge of Zillah Beerbhoom, dated 14*th February*, 1834.

I am directed by the Court to acknowledge the receipt of your letter of the 29th July last, and in reply to inform you that in the case stated by you, if A do not appeal, nor appear as respondent on the appeal of B, the decision cannot be amended in his favor. If however, A do appear, and in his reply to the pleas of B, object to that part of the decision which dismisses a part of his claim, it is competent to the court to go into the whole merits of the case as it effects both parties, and to decide it in the same manner as if A had preferred a separate appeal.

The Western Court, on the 16*th May*, 1834, *concurred in this construction.*

February 14*th*, 1834.

Radha Govind Sing, plaintiff,

versus

Debeepershad Sirkar and Mr. Musselbrooke, } defendants.

From the Officiating Additional Judge of Burdwan to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 20*th January*, 1834.

No. 869.

The original exhibits filed in a suit being missing, the parties are at liberty to file copies.

I beg leave to forward to you, for the information and orders of the Court of Sudder Dewanny Adawlut, a copy of my proceedings under this day's date in the above case in which the original exhibits, and other papers and documents and deeds are missing, but of which copies, I am led to understand, are possessed by and procurable by the parties concerned. The depositions of the plaintiff's witnesses are in the record office and forthcoming.

To the Additional Judge of Zillah Burdwan, dated 14*th February*, 1834.

I am directed by the Court to acknowledge the receipt of a letter and its enclosure from the late officiating additional judge, reporting for orders the loss of certain proceedings in the case of Radha Govind Sing, plaintiff, versus Debeepershad Sirkar and Mr. Musselbrooke.

2. As it appears from Mr. Robertson's roobukaree that he has referred the matter to the judge, the Court do not deem it necessary to pass any orders on it. They however desire me to say that they are aware of no objection to calling upon the parties to supply copies of such of the missing papers as they may have by them, or be able to furnish.

February 14*th*, 1834.

From the Judge of Zillah Futtehpore to the Register of the Court of Sudder Dewanny Adawlut, Western Provinces, dated 10*th February*, 1834.

No 870.

As the decisions of zillah judges in appeals from the decisions of moonsiffs are final under the provisions of Section 28, Regulation V. of 1831, and the Court appear desirous that the Regulations should be strictly attended to in cases of default of plaintiff or absence of defendants; and in several respects the powers of the native judges are not very distinctly laid down; and as I also entertain doubts regarding the stamp duties in certain cases, I request you will obtain for me instructions on the following points.

1803. Reg II Sec 10 Reg III Sec 12. 1814 Reg XXIII Sec 27, Cl 1 Reg XXVI Sec 12, Cl 3

1st. Whether, a suit having been dismissed under the provisions either of Section 12, Regulation III. of 1803, of Clause 1st, Section 27, Regulation XXIII. of 1814, or of Clause 3d, Section 12, Regulation XXVI. of 1814, the plaintiff is at liberty to institute a new suit for the same claim, or is precluded from so doing under Section 10, Regulation II. of 1803.

2dly. In what cases the term nonsuit should be used in decisions. I am desirous of issuing orders to the native judges on the subject, and as uniformity of practice is desirable, I hope the Court will not consider the question needless. The natives entertain different ideas on the subject: some think that a summary appeal cannot be heard from a decision dismissing a cause without an investigation of its merits, unless the word nonsuit is used, and unnecessarily prefer a regular appeal when a summary one would have been sufficient; and others are of opinion that the insertion of it is necessary to enable a plaintiff to institute his suit *de novo*.

3rdly. As rules are prescribed in Clause 1st, Section 27, Regulation XXIII. of 1814, for the guidance of moonsiffs only in cases of default of plaintiff or absence of defendants *after the answer has been filed*, whether in case the plaintiff, prior to the serving of the notice on the defendant, or the filing of the reply, absents himself, the moonsiff is to be guided by that enactment or by Section 12 of Regulation III. 1803.

1814 Reg XXIII Sec 27, Cl 1

4thly. The meaning of Clause 2d, Section 27, Regulation XXIII. 1814, does not appear to me clear. From the words "if the suit be dismissed without an investigation of its merits," it might be inferred, that a cause tried *exparte* and decided in favor of the plaintiff, could not on an appeal on the part of the defendant be remanded back to the moonsiff or transferred to any other competent authority for further investigation, while on the other hand the words "if either of the parties shall appeal," &c. lead to an opposite conclusion. I should also wish to know whether regular or summary appeals are intended in this enactment, and if the former, can a summary appeal be received on the part of a defendant from the decision of a moonsiff, sudder ameen or principal sudder ameen,

1814. Reg XXIII Sec 27, Cl. 2.

on the ground that the suit was tried *exparte* in opposition to the Regulations; and if so, has the judge in such a case the power of remanding the suit back to the lower court for re-trial and decision?

1814. Reg XXVI Sec 3, Cl. 4

5thly. If regular appeals only were intended in the enactment cited in the preceding question, are the rules in Clause 4, Section 3, Regulation XXVI. of 1814 now to be considered applicable to orders and decrees of the new moonsiffs, in cases similar to those therein provided for with regard to registers and sudder ameens?

1814 Reg XXIII Sec. 27, Cl 2

6thly. With reference to the wording of Clause 2, Section 27, Regulation XXIII. of 1814, I request to be informed whether I am right, in considering a judge vested with discretionary power to confirm the moonsiff's dismissal on default, or otherwise, as he may think fit on consideration of the reasons assigned for the neglect in the original trial. If the rule is to be understood literally, it renders it imperative on a judge in every case of appeal either to determine the case on its merits or remand it back to the moonsiff by whom it was dismissed, whether the appellant can furnish a satisfactory excuse for his negligence or not.

7thly. In the event of a regular appeal being preferred by a plaintiff from the decision of a moonsiff, sudder ameen, or principal sudder ameen, dismissing his claim without investigation of its merits, *not* on the ground that the dismissal was contrary to the Regulations (as in that case a summary appeal would be sufficient), but on the ground that the default on his part in the original suit was owing to circumstances entirely beyond his control, must the further investigation of the suit be conducted by the judge himself, or may it be remanded to the inferior court for re-investigation and decision?

8thly. In the event of a regular appeal being preferred under circumstances similar to those in the preceding question by a defendant, viz. that owing to unavoidable circumstances he was unable to defend his cause, and praying that his evidence might be heard in appeal, whether the cause may be sent for re-trial to the lower court or must it be proceeded with by the judge?

1803. Reg IV Sec 18. 1793. Reg V Sec 18. 1831 Reg V

9thly. Whether the rules laid down in Section 18 of Regulation IV. of 1803 for the guidance of Provincial Courts of Appeal are applicable to civil judges appointed under Regulation V. of 1831, for their guidance in cases of regular appeal, in which it appears to them that the original suit has not been sufficiently investigated in the lower court.

1814 Reg XXVI Sec 5, Cl 3

10thly. Is Clause 8, Section 5, Regulation XXVI. of 1814, to be considered as rescinded by Section 2, Regulation X. of 1829; and, if so, are additional sheets when requisite for the purposes therein stated to be of plain or stamped paper; and are dukhlnamuhs taken from individuals on being put into possession of lands, houses, &c. decreed in their favor, required to be on plain or stamped paper?

To the Judge of Zillah Futtehpoor, dated 21st February, 1834.

I am directed by the Court to acknowledge the receipt of your letter of the 10th instant, submitting for the decision of the Court, several points connected with the duties of native judicial officers.

2. *Query 1st.*—On the dismissal of a suit under Section 12, Regulation III. 1803, Clause 1, Section 27, Regulation XXIII. 1814, Clause 3, Section 12, Regulation XXVI. 1814, the plaintiff is at liberty to institute a new suit for the same claim, as if the case had not been heard.

3. *Query 2d.*—If there has been no decision on the merits of a case, but merely a dismissal pronounced on default, the omission of the word nonsuit, in the proceedings of the officer who disposed of the case, cannot be considered to bar the claim of the plaintiff to the admission of a summary appeal.

4. *Query 3d.*—If the plaintiff absent himself previous to service of notice on the defendant or before the reply be filed, the suits cannot be proceeded in and must be dismissed.

5. *Query 4th.*—The defendant cannot of course be expected to file his reply before receiving notice of the claim preferred against him.

The Regulations nowhere provide for a summary appeal from the decisions of moonsiffs; nor can such an appeal be had from such decision on the grounds that the suits have been *exparte*, contrary to the Regulations in force: in such cases the appeal must be regular.

6. *Query 5th.*—The provisions of Clause 4, Section 3, Regulation XXVI. 1814, cannot be considered applicable to moonsiffs, as they have reference only to summary appeals.

7. *Queries 6th, 7th and 8th.*—On the admission of an appeal preferred for a dismissal on default by a moonsiff, the judge cannot confirm the dismissal with reference to reasons assigned for neglect in the original trial, but must either decide the case on its merits or direct the moonsiff to do so, reversing the dismissal on default. The same rule applies to appeals by defendants on the ground that an *exparte* decision was given against them, when they were prevented by circumstances from attending the court.

8. *Query 9th.*—The rules contained in Section 18, Regulation IV. 1803 for the guidance of Provincial Courts, must be considered applicable to judges of districts under Regulation V. 1831, and they may consequently return a case for further investigation.

9. *Query 10th.*—Clause 3, Section 5, Regulation XXVI. 1814 is rescinded by Section 2, Regulation X. 1829. There is no Regulation requiring that additional sheets required for the purpose therein mentioned or for dukhlnamahs taken from individuals put in possession under a decree should be on stamped paper.

The Presidency Court, on the 27th March, 1834, concurred in this construction.

February 21st, 1834.

From the Judge of Moorshedabad to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 5th February, 1834.

No. 871.

1793 Reg III Sec 8. 1795 Reg VII Sec 7 1803 Reg II Sec 5 1831 Reg V Sec 5, Cl 1

The accompanying document is copy of a petition of plaint preferred in the Moorshedabad Court of Appeal for balance of rent claimed on a farm in the Rungpore district. Before the abolition of that court, it was sent over to the city court for trial, on the

ground, that the plaintiff and the defendant were both resident within the jurisdiction of the city court of Moorshedabad.

2. Circumstances connected with the management of the affairs of the plaintiff's heirs, after his death, delayed the hearing of the cause till yesterday, when it came under consideration in this court, and it appeared that the farm for which rent is claimed, is in the Rungpore zillah. Though from its being of greater amount than 10,000 rupees it was only cognizable in the Provincial Court of the division, yet, if a summary suit for the rent had been preferred under Regulation VII. of 1799, it must, I presume, have been preferred in the Rungpore zillah court; if, after a decision, a regular suit had been preferred to reverse the summary award, the plaintiff, whether landlord or tenant, would, if the sum had been below 10,000 rupees, have filed his plaint in the Rungpore and not in the Moorshedabad city court; and as the ground of action is the same whether the regular suit follows a summary award or is preferred without a previous summary suit, I infer that under Section 8, Regulation III. of 1793, this suit should now be tried by the zillah court of Rungpore under the provisions of Regulation V. of 1831, and that before the abolition of the Court of Appeal, the jurisdiction did not depend on the residence of the parties but on the local situation of the farm. Under this impression, as the suit is for a large sum (upwards of three lacs of rupees) and may involve much unnecessary expense to parties, if after my decision an objection was successfully made to the jurisdiction, I have thought it advisable to suspend further proceedings until I have the orders of the Sudder Dewanny Adawlut, as to its disposal, as I do not think myself competent to alter an order of the Court of Appeal even if I happen to be right in my opinion, that the suit is within the jurisdiction of Rungpore, and without that of the Moorshedabad city court.

3. As connected with the question of jurisdiction which forms the subject of this reference, and as involving matter of some consequence with regard to Clause 1st, Section 5, Regulation V. of 1831, I beg to submit the following general question, on which I request to be favored with the construction of the Sudder Dewanny Adawlut. Seeing that a farm, or other fixed property, may be in one jurisdiction or zillah, the landlord resident in another, and the tenant in a third: *Quest.* Which of the three is *the* zillah or jurisdiction competent to try a suit preferred under Clause 1, Section 63, Regulation VIII. 1793, where the demand is neither for land, nor for land rent, but for a receipt on account of money paid, or damages for refusing a receipt for money paid as land rent?

To the Judge of City Moorshedabad, dated 21st February, 1834.

I am directed by the Court to acknowledge the receipt of your letter of the 5th instant, requesting their opinion as to the zillah in which the case of Koonwur Hurnath Rai, plaintiff, *versus* Tarneeshunker and others for the rent of a farm in zillah Rungpore, should be tried, and in reply to refer you to the construction No. 73, dated 4th April, 1811, (in page 17, of the printed Construction Book) and to request that you will transfer the case to the judge of zillah Rungpore for trial.

2. In reply to the question contained in your third paragraph, I am directed to inform you, that the Court are of opinion that the suit instituted under the circumstances supposed by you, would be triable either in the district or jurisdiction in which the money was paid, or in that in which the defendant resided when the suit was instituted.

The Western Court, on the 21st March, 1834, concurred in this construction.

February 21st, 1834.

From the Judge of Zillah Mynpooree to the Officiating Register of the Sudder Dewanny Adawlut, for the Western Provinces, dated 31st January, 1834.

No. 872.

1829.
Reg X Schedule B. Article 8.
1814.
Reg XXVI Sec. 3.
Reg XXIII. Sec 27, Cl. 2.

I request the favor of your soliciting instructions from the Court of Sudder Dewanny Adawlut on the following points.

1st. In the event of a plaintiff being nonsuited under the provisions of Article 8, Schedule B, Regulation X. of 1829, on the grounds that the value of the thing claimed had been understated in the proportion of ten per cent., can a summary appeal be received under Section 3, Regulation XXVI. of 1814, on the ground that the thing claimed was not undervalued, or must the plaintiff prefer a regular appeal?

2ndly. Are the rules in Section 3, Regulation XXVI. of 1814, for summary appeals, applicable to dismissals on default by moonsiffs? Regulation XXIII. makes no provisions for summary appeals from decisions passed by moonsiffs; the meaning of Clause 2, Section 27 of that Regulation appears doubtful. It enacts if *either* of the parties shall appeal, &c. &c. In case of a dismissal on default, the plaintiff alone can have grounds of dissatisfaction, and if the clause is applicable to appeals by defendants in consequence of the original cause having been tried *exparte*, regular appeals must be meant and not summary ones.

To the Judge of Zillah Mynpooree, dated 21st February, 1834.

I am directed to acknowledge the receipt of a letter from you under date the 31st ultimo, submitting certain questions for the Court's opinion.

2. Although the case stated in this question does not fall within the provisions of Section 23, Regulation XXVI. 1814, the Court are of opinion that the principle of the rule contained in Section 4, Regulation XIII. 1808, may be considered to apply, and that consequently a summary appeal may be had from a nonsuit passed under Article 8, Schedule B, Regulation X. of 1829, if it can be shewn by the plaintiff that the value of the property claimed has not been understated by him, and that consequently the order passed by the sudder ameen or principal sudder ameen was erroneous.

3. There is no regulation authorizing a summary appeal from the decision of moonsiffs, the appeal open to a defendant in suits tried exparte is a regular appeal, and to such an appeal Clause 2, Section 27, Regulation XXIII. of 1814, appears to refer.

The Presidency Court, on the 24th October, 1834, concurred in this construction.

February 21st, 1834.

To the Officiating Joint Magistrate of Pubna, dated 28th February, 1834.

No. 873.
1830.
Reg V Sec. 3.
1823
Reg. VI Sec. 7.

I am directed by the Court to acknowledge the receipt of your letter of the 15th instant, requesting to be informed whether a contract entered into by a ryot to cultivate indigo for a period of five or ten years, and by which he is required to settle his accounts annually, and receive fresh advances, is valid, if executed on stamped paper required for the amount of the first year's advances; and whether the ryot can be obliged by it under Regulation V. 1830, to settle his accounts at the end of the year, or on failing to do so, be compelled, under Section 3, to give the number of bigahs mentioned for the entired period named in the contract.

2. In reply, I am directed to inform you that, provided it be proved that the engagement to cultivate indigo was voluntarily executed by the ryot, the criminal court must enforce the provisions of Section 3, Regulation V. 1830; and that, under Section 7, Regulation VI. 1823, no objection can be made to the engagement on account of the stamp, provided the value of it be such as is required for a bond of a similar amount.

3. I am further directed to observe that Regulation V. 1830, is silent as to compelling a ryot to settle his accounts at the end of the year.

February 28th, 1834.

To the Judge of Zillah Bareilly, dated 14th March, 1834.

No. 874.
1829
Reg X Schedule B,
Article 3.

I am directed by the Court to acknowledge the receipt of your letter of the 5th instant, regarding the calculation of stamp on petitions of plaint, &c.

2. In reply, I am directed to inform you that the practice of your court of excluding the fractional parts of a rupee from such calculations is irregular; any sum however small constituting an excess requiring an increase of stamp.

The Presidency Court, on the 4th April, 1834, *concurred in this construction.*

March 14th, 1834.

To the Judge of Zillah Jessore, dated 21st March, 1834.

No. 875.
1813.
Reg VI.
1824
Reg XV.

The Court having had before them the proceedings submitted by you with your return of the 24th September last, in reply to a precept in the case of Cheedam Chunder Biswas, petitioner, direct me to communicate to you the following observations and orders thereon.

2. They are of opinion that the joint magistrate was not competent to certify the case of the petitioner to you under Regulation VI. 1813; the provisions of that Regulation which relate to the summary investigation of cases of forcible disposition, &c. having been modified and superseded by Section 2, Regulation XV. 1824. It is expressly declared in the preamble of that Regulation that the "reference" of such cases "from the foujdary to the dewanny court, as prescribed by Section 5, Regulation VI. "1813, might not always insure the prompt enquiry and decision, which are essential to

"the object of the summary process therein provided for;" while Section 4 provides that no investigation of the same case (viz. a case which has been brought forward in a criminal court,) shall be entered upon the civil court otherwise than on the institution of a regular suit.

3. The circumstance of the proprietor of the land not being a party in the suit, which seems to have induced the joint magistrate to refer the case to you, is immaterial; as under the rule contained in the sixth paragraph of the circular order of 7th January, 1831, it was competent to the joint magistrate to make him a party thereto, by issuing to him the perwaneh prescribed in Section 3, Regulation XV. 1824.

The Western Court, on the 7th March, 1834, *concurred in this construction.*

March 21st, 1834.

From the Judge of Zillah Furruckabad to the Register of the Sudder Dewanny Adawlut, Western Provinces, dated 11th March, 1834.

I beg permission to bring the following point to the notice of the Court:

No. 876.
1825.
Reg XX Sec. 3, Cl 1.

1st. With reference to Clause 1st, Section 3, Regulation XX. 1825, are civilians, merchants and others, being European British subjects, who reside within the limits of a cantonment, but totally unconnected with the army, to be subject in actions of the nature specified, to a military court of requests, or to the civil courts? or to either, at the option of the plaintiff?

2d. If they are at all to be subject to the several military courts of requests, it would seem expedient to determine what is to constitute residence? Many of the indigo planters in this part of the country have two or even more residences, one in a station or cantonments, the other at their factories, residing occasionally at each, and neither can be called their permanent residence more than the other. Of which are they to be considered residents? or of both places?

3d. In the one of these cases there would be clashing of authority, and in the other, supposing an indigo planter to reside within the limits of cantonments at a sudder station and to have a factory in a joint magistrate's division, situated fifty miles distant, at which he often resides—in the event of his being accused of ill-treating the people (for this I conclude to be the meaning of the term "personal actions," provided the damages or fine imposed would not exceed 400 rupees,) or non-payment of which would ordinarily be cognizable by the joint magistrate, the plaintiffs must go all the way to the sudder station to the military court of requests, which sits but once a month.

4th. The whole tenor of Regulation XX. of 1810, is plain enough in restricting the jurisdiction of a court-martial or military court of requests, to persons not being European British subjects, to the following classes, viz. 1, officers, and soldiers, and retainers of all sorts in the receipt of public pay; 2, servants of officers; 3, persons registered as belonging to the bazars. It would seem to have been the intention of Regulation XX. 1825 to make the same discrimination in regard

to European British subjects; but there is much diversity not only of opinion but of practice on this head.

To the Judge of Zillah Furruckabad, dated 26th March, 1834.

I am directed by the Court to acknowledge the receipt of your letter of the 11th instant, requesting the opinion of the Court on certain points connected with Clause 1, Section 3, Regulation XX. 1825.

2. The military court of requests being a King's court, constituted by an Act of Parliament, the Court are not competent to determine the extent of its jurisdiction, which must be decided by the military court itself under the laws enacted for its guidance.

3. The Court are however of opinion that the civil servants of the Company, merchants, and others mentioned in paragraph 2 of your letter, (who reside within the limits of a cantonment, although totally unconnected with the army,) are under the terms of the Regulation subject, during their actual residence, to the jurisdiction of a military court of requests, and to that of no other court, in all cases of personal action of debt; they are consequently exempted from the authority of the Company's courts while so resident.

4. The residence or non-residence of a person within the jurisdiction of the court of requests or of the Company's courts must be determined by the circumstances of each case as it occurs; the Court consider it unadvisable to lay down a general rule on a point the decision of which may be affected by such a variety of considerations.

The Presidency Court, on the 18th April, 1834, concurred in this construction.

March 26th, 1834.

From the Judge of Zillah Dacca to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 11th March, 1834.

No. 877.
1825. Reg VII Sec 3, Cl 6 Circular Order, 19th July, 1833

Since the Court's order, to delay sales of real property in satisfaction of decrees for three months from the date of any order disallowing a claim to the same, it has become a practice to cause petitions of claims to be presented the day previous to that fixed for the sale, not with a view of eventually establishing any claim, but for the sole purpose of getting the prayer disallowed, and obtaining a delay of three months, at the end of which, a new petition of claim is ready to be thrown in by another hand, so that the execution of decrees becomes delayed *ad infinitum*.

2. The Court, in their order which fixes three months as a period for appeal, instead of one month, do not appear to me to have superseded Clause 6, Section 3, Regulation VII. 1825, the provisions of which are equally applicable to a longer as a shorter period for appeal: indeed the functions of the Court being executive, not legislative, they could not have intended to rescind that enactment: but I request specific instructions on this point, i. e. whether petitions thus dropped in the day before that fixed

for sale, without documents or any sort of support, are to be permitted to postpone the sale for three months. I request you will lay this letter before the judges for their orders; in the meantime it is my intention to act under the Regulation above quoted.

To the Judge of Zillah Dacca, dated 27th March, 1834.

I am directed by the Court to acknowledge the receipt of your letter of the 11th instant, No. 117, and in reply to observe that you have mistaken the intent of their circular order of the 19th July last, which was not to allow a new postponement of the sale on the rejection of every petition objecting thereto, but merely to prohibit the order for sale being carried into execution for three months, that is, until the expiration of the period prescribed for appealing, with a view of enabling the parties dissatisfied with it, to prefer their appeal within that period.

2. The Court do not understand by what rule you consider one month to be the period prescribed for summary appeals to this Court: the fifth Clause of Section 3, Regulation XXVI. 1814, declares the period to be the same in summary as in regular appeals.

March 27th, 1834.

From the Officiating Judge of Zillah Bundlekhund to the Registrr of the Sudder Dewanny Adawlut for the Western Provinces, dated 2d April, 1834.

No. 878.
1831
Reg V Sec 16, Cl 3.

I have the honor to submit for the sentiments and orders of the Court of Sudder Dewanny Adawlut the following particulars:

My predecessor, Mr. Ainslie, heard five cases of appeals under the provisions of Regulation V. 1831, Section 16, Clause 3, and, seeing no reason to alter the decisions appealed from, he confirmed them; no orders however were passed regarding the amount of the remuneration the vakeels were entitled to, nor was any order passed regarding the repayment of any portion of the stamp duty of the paper upon which the appeals were written; Mr. Ainslie did not, it appears, clearly perceive under what head the appeals of Regulation V. 1831, Section 16, Clause 3, were to be included, and he intended to have submitted an application to the Court for instructions on the subject, but was prevented from doing so by illness.

2. On examining myself the various Regulations regarding the payment of portions of stamp duty and the fees of vakeels, I feel, as Mr. Ainslie did, some uncertainty as to the rules which should be observed in cases coming under Regulation V. of 1831 now referred to; I would solicit therefore the instructions of the Court on the following three points:

1st. What class of appeals are those decided under Section 16, Clause 3 of Regulation V. of 1831 to be considered as belonging to?

2d. What amount of remuneration are vakeels entitled to? and

3d. Whether any portion of the stamp duty is to be repaid, and, if so, the rule for regulating the amount?

To the Officiating Judge of Zillah Bundlekhund, dated 11th April, 1834.

I am directed by the Court to acknowledge the receipt of your letter of the 2d instant, requesting the opinion of the Court regarding cases of appeal decided under the provisions of Clause 3, Section 16, Regulation V. 1831.

2. *Question 1st.* In reply to your first question I am directed to inform you that appeal cases so disposed of should be viewed as regular appeals, decided on their merits after a perusal of the record, as required by the Regulation, and should be entered as such in the monthly statements.

3. *Question 2d* The vakeels are entitled to the full remuneration awarded them by the Regulations in cases regularly decided on their merits.

4. *Question 3d.* No portion of the stamp duty should be returned.

The Presidency Court, on the 2d May, 1834, concurred in this construction.

April 11th, 1834.

To the Judge of Zillah Shahabad, dated 11th April, 1834.

No. 879.
1891
Reg. VIII. Sec. 9.

I am directed by the Court to acknowledge the receipt of your letter of the 1st instant, and in reply to inform you, that they entirely concur with you in opinion that the collector exceeded his competency under Section 9, Regulation VIII. 1831, in referring summary suits to moonsiffs to be tried as regular.

The Western Court, on the 2d May, 1834, concurred in this construction.

April 11th, 1834.

Resolution of the Court of Sudder Dewanny Adawlut for the Western Provinces, held at Allahabad, on the 14th February, 1834.

No. 880.
1833
Reg. II Sec 5.
1829
Reg. X Schedule B

Resolved.—That with reference to the provisions of Section 5, Regulation II. 1833, under which the Courts of Sudder Dewanny Adawlut are authorized to dispose of all appeal cases received from the late Provincial Courts, "in the same manner as though "they had been regularly cognizable by and referred to or instituted before them," it is evidently the intention of the Government that the transfer of these cases should not occasion any additional hardship on the suitors, further than was unavoidable from their removal from one court to the other; that the Courts of Sudder Dewanny Adawlut are thus placed in the situation of the late Provincial Courts with regard to these cases and may receive petitions and vakalutnamehs, and give copies of decrees and other documents on paper bearing the stamp which was required by the provisions of Schedule B, Regulation X. 1829, for such papers in the late Provincial Courts.

To the Register of Sudder Dewanny Adawlut, Western Provinces, dated 14th March, 1834.

I am directed by the Presidency Court to acknowledge the receipt of your letter of the 14th ultimo, No. 46, forwarding a draft of a resolution, declaring that in appealed

cases received from the abolished Provincial Courts, the same stamps are to be used for petitions and vakalutnamehs, as were required for such papers in the late Provincial Courts.

2. The Presidency Court are of opinion that the words quoted in the Resolution cannot be held to authorize the use of a stamp of a different value, in cases received from the Provincial Courts under Regulation II. of 1833, from that required in cases before the Court under the rules in force before that Regulation was enacted, and that as the parties have the benefit of a final decision, they ought to pay the rates of the higher tribunal. They direct me to add further that they think that it would be objectionable to have two rates of stamps in use in the same court.

From the Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 14th April, 1834.

I am directed by the Court to acknowledge the receipt of your letter of 14th ultimo, in reply to the Court's letter of the 14th February, regarding the amount of stamp leviable in cases of appeal transferred from the Provincial Courts to the Sudder Dewanny Adawlut.

2. On further consideration of the subject the Court have determined to adopt the interpretation of the law proposed by the Presidency Court, and will be guided by it in their future proceedings.

3. As connected with this subject the Court are desirous of learning the opinion of the Presidency Court with regard to the stamp leviable on similar papers, (viz. petitions, vakalutnamehs, copies of decrees, &c.) in original suits transferred under the same Regulation II. 1833, from the late Provincial Courts to the zillah judges. By a parity of reasoning the stamp should apparently be that which has hitherto been required in the judge's court in cases instituted before it.

The Calcutta Court concurred in the construction contained in the third paragraph on the 2d May, 1837.

April 11th, 1834.

To the Joint Magistrate of Burdwan, dated 18th April, 1834.

I am directed by the Court to acknowledge the receipt of your letter of the 7th instant, No. 24, and in reply to inform you that the provisions of Section 3, Regulation II. 1834, are not applicable to prisoners detained on a requisition of security for good behaviour.

No. 881.
1834.
Reg II. Sec. 3.

The Western Court, on the 16th May, 1834, concurred in this construction.

April 18th, 1834.

No. 882.

Extract of a letter from the Session Judge of Zillah Purneah to the Register of the Presidency Court of Nizamut Adawlut, under date the 2d April, 1834.

Held that a session judge is competent to impose a fine upon an officer of the magistrate's establishment guilty of negligence or disrespect, while in attendance at the sessions.

The accompanying roobukarry and English letter exhibit a difference of opinion which has arisen betwixt myself and the magistrate of this district, which I request you

will have the goodness to bring to the notice of the Court and solicit their orders respecting it.

A mohurrir belonging to the magistrate's establishment, attending upon me during the criminal sessions, is guilty of negligence and disrespect, and I impose a fine of four rupees upon him, and inform the magistrate that I have done so. The magistrate questions my competency to do this, and in support of his opinion quotes Section 5, Regulation VII. 1831.

To the Session Judge of Zillah Purneah, dated 18th April, 1834.

I am directed by the Court to acknowledge the receipt of your letter of the 2d instant, No. 18, and its enclosure, soliciting their opinion in regard to a difference which has arisen between you and the magistrate, in consequence of your having fined one of the magistrate's mohurrirs, who was attending on you during the criminal sessions, for negligence and disrespect.

2. In reply, I am directed to inform you that the Court are of opinion that you were competent, under the circumstances stated, to impose a fine on the mohurrir, and that Section 5, Regulation VII. 1831, quoted by the magistrate, is inapplicable to the case in question.

The Western Court, on the 16th May, 1834, *concurred in this construction.*

April 18th, 1834.

To the Commissioner of Circuit for the 4th or Moradabad Division, dated 18th April, 1834.

No. 883.

1834.
Reg II. Sec 2. 1821
Reg. III Sec 2, Cl. 3.

I am directed by the Court to acknowledge the receipt of your letter of the 3d instant, with its enclosure.

2. In reply, I am directed to inform you that under the terms of Section 2, Regulation II. 1834, assistants exercising the special powers described in Clause 3, Section 2, Regulation III. 1821, cannot in any case award a longer term of imprisonment than one month in lieu of stripes; they are however at liberty, as in other cases in which they deem the prisoner deserving of a degree of punishment beyond their competency, to return the case to the magistrate for the issue of final orders, stating their own opinion thereon.

The Presidency Court, on the 2d May, 1834, *concurred in this construction.*

April 18th, 1834.

To the Officiating Judge of Zillah Mympooree, dated 16th May, 1834.

No. 884.
1833
Reg IX. Secs. 14 and 15.

Held that on the institution of a suit for rent before a judicial officer, proof must be required that the plaintiff has conformed to the rules laid down in Sections 14 and 15, Regulation IX. 1833: the nature of the proof will of course be such as the plaintiff is able to adduce.

The Presidency Court, on the 13th June, 1834, *concurred in this construction.*

May 16th, 1834.

885.
20 May, 1834.

From the Judge of Zillah Rajshahye to the Register of the Presidency Court of Sudder Dewanny Adawlut, under date the 22d March, 1834.

No. 885.

A party being in attendance on a criminal court on bail, to answer to a criminal charge, is not liable to arrest under civil process.

I beg to submit, for the consideration of the Superior Court, the following question, as a case has occurred in which a decision on the point is required.

2. Is an individual, charged with forgery before the magistrate, and who gives security through the agency of another to appear when called for, and is in attendance till his case come on, secure from arrest by an officer of the civil court in satisfaction of a decree?

3. I am aware that by the English law parties in actual attendance on a court of justice, are not liable to arrest on a civil action while so attending; but I apprehend a person cannot be construed to be in actual attendance, who has given security through another to appear when called for. admitting however this to be the case, our regulations, so far as I am acquainted with them, do not prohibit the service of civil process under such circumstances. The case of course supposes the individual is not seized in court, in the presence of the magistrate, or when his case has come on for a hearing.

From the Judge of Zillah Rajshahye to the Register of the Presidency Court of Sudder Dewanny Adawlut, under date the 30th April, 1834.

I have to request your obtaining a reply to my letter of the 22d March last to your address, on the subject of serving civil process on persons attending the cutcherry of a magistrate. A case of a similar nature to that already referred has now come on, in which a defendant is before the collector; and others of a like import will in all probability frequently occur. I have deferred issuing process of arrest against him, and have to request you will ascertain as soon as practicable the opinion of the Superior Court on the point submitted by me in my letter above alluded to.

Opinion of the Advocate General.

I certainly think that "according to the law of England" a person "attending in a criminal court on bail to answer to a criminal charge" is not liable to be arrested under civil process. I have thus answered the *general* question that has been put to me—of course I do not know whether any case of the kind exists at present; nor (if it does) what are the particulars of it; nor what might be my opinion of them. But it is a general rule that a person attending on a court of justice is entitled to protection from arrest.

To the Judge of Zillah Rajshahye, dated 23d May, 1834.

I am directed by the Court to acknowledge the receipt of your letter of the 22d March and 30th ultimo, and, in reply to the question proposed in the first, to forward to you the accompanying copy of one from the solicitor to the Honorable Company dated the 13th instant, forwarding an opinion of the advocate general; and to inform you that the Court concur in the opinion that a party being in attendance on a criminal court on bail to answer to a criminal charge is not liable to arrest under civil process.

2. The Court will answer the question put in your second letter after they shall have consulted with the judges of the Western Court of Sudder Dewanny Adawlut.*

May 23*d*, 1834.

To the Commissioner of Circuit for the 19*th Division, dated* 13*th June*, 1834.

No. 886. 1824 Reg XV.

I am directed by the Court to acknowledge the receipt of your letter of the 27th ultimo, No. 602, and its enclosures.

2. The Court, understanding the point at issue between you and the magistrate of Balasore to be, whether you are competent to direct the magistrate to take up and enquire into a case under Regulation XV. 1824, he (the magistrate) not deeming such a measure necessary for the preservation of the peace, are of opinion, with reference to construction No. 430 of the printed construction book, and to the general powers of control vested in a commissioner, that you were competent to do so.

The Western Court, on the 11*th July*, 1834, *concurred in this construction.*

June 13*th*, 1834.

From the Commissioner of Circuit 5*th Division to the Register of the Nizamut Adawlut, Western Provinces, dated* 18*th June*, 1834.

No. 887. 1832 Reg III. Sec. 2, Cl 2.

I have the honor to submit, for the consideration and orders of the Court of Nizamut Adawlut, the proceedings and reports noted in the margin,† received from the magistrate of Shahjehanpore, as I must be equally anxious with that officer to have the benefit of the Court's opinion on the question referred. It may be thus stated; whether the grounds set up for the defence in the case No. 1 can be legally maintained, namely, that the defendant (Yacoob Allee Khan,) having purchased the two children which he is accused of having stolen from the prosecutor, their parent, under a formal voluntary contract, and with the written sanction of the authority exercising the powers of magistrate at Jubulpoor, cannot be held liable to the penalty prescribed in Clause 2nd, Section 2 Regulation III. of 1832.

2. The Court will observe, from my letter to the magistrate in reply, the view I have taken of the proceedings in that case. It was written on a consideration of the report made to the register of the Nizamut Adawlut by the late superintendant of police of the Western Provinces, dated July the 19th, 1814, and of the construction of that Court of the provisions of Regulation X. of 1811, given in their orders to the magistrate of Agra, dated April the 23d, 1812. Vide Circular Orders No. 141, Baptist Mission Press edition.

3. I did not then refer to Regulation III. of 1832, which I have since done, and it may be, though I still entertain doubts on that point, that the prohibition therein

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* See Construction No. 893

† No. 1. Letter from Magistrate of Shahjehanpore, dated the 11th June, 1834, with one English enclosure and mussel, in the case of Madaree versus Yacoob Allee Khan No 2. Ditto ditto, dated 11th instant, with ditto ditto in the case of Mohummud Allee Khan.

enjoined, is applicable to this particular case as regards the purchase of the children of the defendant; if so, it would of course equally apply to the prosecutor.

4. On the other hand, as no parents can entail bondage upon their children, which thus must be held to be, I conceive, considering the extended period of the contract to the 60th year of their age, I feel the question to be embarrassing for decision.

5. It must be known to the superior Court if, as alleged in the accompanying documents, the authorities at Jubulpore and Saugor and at other parts of that country where distress from famine unfortunately prevails, are authorized to attest to the disposal of children by their parents as hirelings, for a limited period, on the condition of their being fed and supported by the party engaging for them.

6. In regard to the second case, the petition of Mohummud Allee, I beg to be informed is the magistrate authorized to interfere in such cases?

From the Magistrate of Shahjehanpore to the Commissioner of Circuit, Bareilly, dated 11th June, 1834.

I have the honor to transmit a report from Mr. Rose, the joint magistrate of this station, in the case Madaree versus Yacoob Khan.

2. I have to request the favor of your transmitting it together with the accompanying proceedings, for the orders of the Nizamut Adawlut.

3. I wish to be furnished with instructions as to the course to be taken in like cases.

4. I have no doubt of the genuineness of the signature of Captain R. Low affixed to the deed of sale.

From the Magistrate of Shahjehanpore to the Commissioner of Circuit, Bareilly, dated 11th June, 1834.

I have the honor to transmit to you copy of a letter from Mr. Rose, the joint magistrate of this station, and copy of a petition of Mohummud Allee, stating that in consequence of the famine to the southward the British authorities have permitted the purchase of slaves, that he had in consequence purchased a girl there, and had entrusted her to Byram Khan, from whom she had run away, and claiming my interference to restore her to him.

2. I have to request the favor of your bringing the case before the Nizamut Adawlut, that I may be instructed how to proceed.

3. I may state that some time ago the girl made her appearance at one of the tannahs of this district in a starving condition, and that the tannahdar offered to take charge of her, which he was permitted to do until her natural guardian could be found.

From the Joint Magistrate of Shahjehanpore to the Magistrate of this District, dated 9th June, 1834.

Madaree versus Yacoob Allee Khan.

I have the honor to submit my proceedings in the case noted in margin.

2. The complainant prosecutes to recover two daughters aged 5 and 8 years, alleged to have been stolen by the defendant from the bazar of Jubulpore in the month of March or February last.

3. The defendant, who is a sowar in the regiment of irregular horse now stationed at Bareilly, rests his defence on the grounds that the children were sold to him and Abdoollah Khan, a jemadar in the same corps, by their parents; that the sale of children was universally customary in that part of the country in consequence of a famine, and that transactions of this nature were so far countenanced by the constituted authorities that regular bonds or deeds of sale were attested before them and duly registered in a book kept for that purpose.

4. In support of this assertion he produces an urzee from Abdoollah Khan, to the same effect, and a bond stating that the parents have for the sum of rupees 14, given up their children to the purchaser, Abdoollah Khan, to be disposed of in such way as he pleases until they attain the age of 60 years, on condition that they are to be supported by the purchaser.

5. This bond bears an order that after being verified by the different parties, the bond shall be registered, to which order are affixed certain initials alleged by the defendant to be those of the magistrate of Jubulpore.

6. The name of the individual disposing of the children, as contained in the bond, and that of the prosecutor are different, but this discrepancy in no way affects the right of the present complainant, as the defendant admits that he is the parent of the children, and accuses him of having fraudulently misrepresented his name before the authorities of Jubulpore.

7. As slavery is prohibited by our Government, I have restored the children to their parents.

8. I am desirous to receive instructions from you as to the mode of proceeding to be adopted with regard to the defendants.

9. If the case be proceeded in, it will be necessary to send the alleged bond to Jubulpore, in order that the authorities there may verify it or deny its authenticity.

From the Commissioner of Circuit, 5th Division, to the Magistrate of Shahjehanpore, dated 16th June, 1834,

I have the honor to acknowledge the receipt of your letter of the 11th instant, forwarding the proceedings held by the joint magistrate in the case of Maduree versus Yacoob Allee Khan, together with a report from that officer on the circumstances of it.

2. As the offence charged against the accused, namely, his having stolen two girls, aged 5 and 8 years, from the bazar of Jubulpore, took place (supposing it to be true) in the zillah of Jubulpore, it could not legally be tried by the joint magistrate of Shahjehanpore, upon the ground that all crimes must be tried in the jurisdiction within which they are perpetrated, unless he had obtained the special authority of the Nizamut Adawlut to conduct the trial under the provisions of Regulation VIII. of 1822.

3. The principles of the Mohummudan law authorize the sale of children by their parents in times of distress occasioned by famine and scarcity, and I am not aware of any existing Regulation of our Government containing a prohibition against the practice. If therefore the spirit of that law is allowed to be observed in our criminal courts, it is doubtless with the humane intention of preventing the greater evil, which would otherwise happen to the children, of being left to perish.

4. In the case referred, there seems to be sufficient evidence that the accusation against the defendant of having stolen the two girls is false, and that the contract for their sale between the prosecutor and the defendant did take place with the knowledge of the local authority at Jubulpore; and if the magistrate had jurisdiction he would have found means of disposing of the case by applying to it the Circular Orders of the Nizamut Adawlut dated October 5th, 1814 (Baptist Mission Press Ed.), which contains the Court's construction in explanation of this subject of your present reference.

5. I will submit this case as you request to the superior Court, as well as that of Mohummud Allee referred to in your separate letter of the 11th of June, for their consideration and orders.

To the Commissioner of Circuit for the 5th Division, dated 27th June, 1834.

I am directed by the Court to acknowledge the receipt of your letter of the 18th instant, with its enclosures.

2. In reply to the question contained in paragraph 8 of Mr. Rose's letter of the 9th instant, I am directed to inform you that as it appears that the children in question were not purchased for importation and sale as slaves, the defendants cannot be considered liable to the penalty laid down in Clause 2, Section 2, Regulation III. 1832.

3. With regard to the case mentioned in Mr. Robinson's letter of the 11th instant, the Court direct me to state in reply to the 1st and 2nd paragraphs that the magistrate has no authority to interfere with a view to restore the child to the petitioner Mohumud Ali.

The Presidency Court, on the 18th July, 1834, *concurred in this construction.*

June 27th, 1834.

From the Judge of Zillah Dacca to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 24th June, 1834.

Regulation II. 1806, Section 4, invests judges with the power to commit to close custody defendants intending to abscond, or withdraw themselves from the jurisdiction of the court in default of furnishing security; but does not specify what course is to be pursued if the defendant shall have actually withdrawn himself from the jurisdiction of one zillah judge to that of another.

No. 888.
1806
Reg. II Sec. 4

2. A case of this kind has arisen accompanied by difficulties. The judge of Moorshedabad has issued a perwanneh to his nazir to require security from, or apprehend a

foreigner, named Moollah Syud, now in this city for twenty-four days past, and backed it with a request to the judge of Dacca to cause its enforcement. The perwanneh has been brought hither by a single chupprassee, who has neither diet money for the prisoner, who is a man of respectable manner and appearance, nor boat hire for the purpose of conveying him to Moorshedabad. He (the Moollah Syud) at first made some objection to the enforcement, but on the matter being explained to him by the nazir he declared himself ready to accompany the chupprassee; who is not prepared to remove him. The question now is what should be done with him?

From the Judge of Zillah Dacca, dated 4th July, 1834.

I am directed by the Court to acknowledge the receipt of your letter of the 24th ultimo, No. 248, requesting the Court's opinion as to the course to be pursued under the circumstances therein stated.

2. In reply, I am directed to observe, that as the defendant was not within the limits of the district in which the suit against him was instituted, at the time the process issued under Section 4, Regulation II. 1806, was served upon him, the rule contained in that Section does not apply; and consequently that you should immediately release him, leaving the Moorshedabad court to decide the case pending *exparte*, if he fail to appear or defend the suit.

The Western Court, on the 25th July, 1834, *concurred in this construction.*

July 4th, 1834.

To the Commissioner of Circuit for the 7th Division, dated 4th July, 1834.

No. 889.

1803. Reg XXXV. Sec. 3, Cl. 4 1806 Reg IX Secs. 13 and 14. 1810 Reg VI Secs. 3 & 4. 1812 Reg III Sec. 4. 1814 Reg VIII.

I am directed by the Court to acknowledge the receipt of your letter of the 23d ultimo, with its enclosures, regarding a case of alleged negligence, in apprehending an offender, on the part of the proprietor of the village of Anuthooa.

2. With regard to the point of constructions which you have stated in your second paragraph, viz. whether the provisions of Regulation XXXV. 1803, were applicable to the case in question, although no charge had been preferred by a private prosecutor, the Court observe that Clause 4, Section 3 of that Regulation, does not appear to them to contain any thing which can authorize the inference that a private prosecution was necessary to enable the magistrate to act; this opinion is moreover upheld by the terms of the corresponding enactments mentioned in the margin,* which are as follows:—"If a magistrate shall have cause to believe or suspect, &c."—This evidently leaves the magistrate at liberty to exert the authority vested in him by those provisions, whatever may be the means by which he has acquired the information tending to criminate the zemindar. The rule contained in the latter part of Section 4, Regulation IX. 1807, which regards criminal charges in general, and authorizes the issue of a magistrate's process on the report of a police officer or other credible information, may be considered equally applicable to charges of the description in question.

*1808 Reg IX. Secs. 13 and 14. 1810 Reg VI Secs. 3 & 4 1812 Reg. III Sec. 4. 1814 Reg VIII.

3. You are requested to send a copy of this letter to the acting magistrate of Banda for his information and guidance; the Persian papers are herewith returned.

The Presidency Court, on the 1st August, 1834, *concurred in this construction.*

July 4th, 1834.

To the Judge of Zillah Jessore, dated 11th July, 1834.

No. 890.

The rights and interests of a jotedar may be sold in satisfaction of a decree given against him.

I am directed by the Court to acknowledge the receipt of your letter of the 24th ultimo, and its enclosure, requesting the Court's opinion as to the liability of the jote jumma of a ryot to be sold in execution of a money decree provided the zemindar do not object to the measure.

2. In reply, I am directed to inform you that the Court are of opinion that the right and interest of the jotedar may be sold in satisfaction of a decree.

The Western Court, on the 5th September, 1834, *concurred in this construction.*

July 11th, 1834.

To the Commissioner of Circuit for the 15th Division, dated 18th July, 1834.

No. 891.

Magistrates how to proceed in certain cases of gambling

I am directed by the Court to acknowledge the receipt of your letter of the 28th April last, No. 27, requesting the opinion of the Court as to whether persons found playing in gambling houses are punishable under the Regulations of Government by magistrates.

2. In reply, I am directed to inform you that the Court are of opinion that as the Regulations contain no specific enactment on this point, the magistrate should, in any case of doubt, take a futwa from the law officer, and proceed in conformity with his exposition of the Mahomedan law.

The Western Court, on the 5th September, 1834, *concurred in this construction.*

July 18th, 1834.

To the Judge of Zillah Cuttack, dated 25th July, 1834.

No. 892.

1818
Reg X. Sec. 5. Cl 1.
C O 4th Jan. 1833, No 131.

I am directed by the Court to acknowledge the receipt of your letter of the 11th instant, and in reply to communicate to you their opinion that the provisions of Clause 1, Section 5, Regulation X. 1818, which specially require the judge to pass orders for the confinement of defaulters in the cases therein alluded to, are not affected by the Circular Order of the 4th January, 1833, which intended to provide for the cases of prisoners confined under decrees of collectors under Regulation VIII. 1831, which are not provided for by that Regulation.

The Western Court, on the 22d August, 1834, *concurred in this construction.*

July 25th, 1834.

To the Judge of Zillah Rungpore, dated 1st August, 1834

No. 893.

A person in attendance on a collector to defend a suit or claim, or on a magistrate to answer a criminal charge is protected from arrest under civil process.

In continuation of my letter of the 23d May last, No. 1024, I am directed by the Court to inform you that they are of opinion that a person being in attendance on a collector to defend a suit or claim pending before that officer is protected from arrest under civil process, in like manner as persons in attendance on a magistrate to answer a criminal charge; and that in either case the protection will last only as long as the party is in actual attendance or coming to or returning from the court.

The Western Court, on the 4th July, 1834, *concurred in this construction.*

August 1*st*, 1834.

From the Judge of Zillah Tirhoot to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 8th May, 1834.

No. 894.

1793. Reg. XLIX. C. C. S. D. A. 15th Nov 1833. No. 100.

A difference of opinion having arisen as to what suits are now cognizable by the courts under Regulation XLIX. 1793, since the receipt of the circular of the 15th November last, regarding suits referrible to the revenue authorities, I shall feel obliged by your obtaining for me the opinion of the Court on that point.

2. The third paragraph of that circular refers cases of dispossession of ryots by landlords to the collector, and I wish to be informed whether that includes all disputes for possession between landlord and tenant, and whether Regulation XLIX. 1793, is hereafter to include only disputes between proprietors of different estates and between proprietors and holders of rent-free and other fixed tenures within the estate.

3. As a case in point—a jaghiredar dies, by which all tenures held from him lapse, and the Government make a settlement with the proprietors of the village, who not being able to get the terms they require from the ryot, or from some private reasons perhaps, oust the ryot from the lands he held by pottah from the jaghiredar. The question as to the right to hold the lands at all, or on what terms, may be referred to a regular suit in the civil court; but in the interim, if the ryot wishes summarily to regain possession and hold the lands on the former terms until that point be decided, is his suit cognizable by the court under Regulation XLIX., or referrible to the collector under that circular? Rent is in this and must in every case *between landlord and tenant* be the cause of dispute, and therefore in my opinion, it comes within the intention of the circular in question, and is referrible to the collector.

4. If it were not so, a ryot might be placed in an awkard predicament, by the court upholding his possession on the former terms by Regulation XLIX. and the revenue authorities decreeing a higher rate of rent, and ousting him for non-payment of it, or giving power at the time of resumption to the proprietor, to make his own arrangements with other ryots.

5. In this district resumptions by Government are constantly taking place, and cases similar to the above may frequently occur, it is therefore desirable that the parties,

who are often indigo planters, may know to what authority they must apply for redress if they are ousted; in addition to which, it will prevent any clashing of authorities, a thing always to be avoided if possible.

To the Judge of Zillah Tirhoot, dated 22d August, 1834.

I am directed by the Court to acknowledge the receipt of your letter of the 8th May last, requesting to be informed what suits, since the issue of the circular order of the 15th November last, are cognizable by the judge under Regulation XLIX. of 1793, and in reply to inform you that as the Regulation in question has not been rescinded, parties forcibly dispossessed have still the option of resorting under its provisions to the civil court, any thing in the circular order notwithstanding. I am at the same time directed to add that as the particular case mentioned by you does not include violence, it is cognizable by the collector under the circular order of the 6th December last; Regulation XLIX. 1793, under the construction No. 39 of the printed construction book, being applicable only "to cases of dispossession by force amounting to breach of the peace."

The Western Court, on the 25th July, 1834, *concurred in this construction.*

August 22d, 1834.

To the Judge of Zillah Furruckabad, dated 5th September, 1834.

No. 895.
1833.
Reg. IX.

I am directed by the Court to acknowledge the receipt of your letter of the 26th ultimo.

2. In reply, I am directed to inform you that the decisions of punchaets appointed under Regulation IX. 1833, should be enforced by the revenue authorities, the judicial functionaries having no power to carry them into effect.

The Presidency Court, on the 26th September, 1834, *concurred in this construction.*

September 5th, 1834.

From the Judge of Zillah Moradabad to the Register of the Sudder Dewanny Adawlut, Western Provinces, dated 29th April, 1833.

No. 896.
Mode of proceeding on the records of a moonsiff's court having been destroyed by fire.

I do myself the honor to acknowledge the receipt of your letter of the 15th ultimo, together with a copy of a letter from the secretary to Government, dated the 23d February, authorizing me to procure from the collector's office and furnish the parties, in the nineteen cases destroyed by fire, in the moonsiff's office at Rajpoorah, with stampt paper, to enable them to institute their suits anew free of expence.

2. The orders of Government will be attended to in this respect; but I beg to state that the whole of the papers in the eleven undecided cases, noticed in the 8th paragraph of your letter, were reported by me to have been also burnt with the recorded decision of the moonsiff—in all thirty cases.

3. As I conceive the object of Government is to enable the parties to sue again without a repetition of expence, I conclude that the persons interested in the thirty cases were all intended to have been included in the indulgence; but I take the precaution, as nineteen cases were only specified in the letter of the secretary, to solicit the orders of the Court.

From the Register of the Western Provinces to the Judge of Zillah Moradabad, dated 10th May, 1833.

I am directed by the Court to acknowledge the receipt of your letter of the 29th ultimo, in reply to the Court's orders of the 15th.

2. With regard to the eleven suits in which a decision has been already passed, the Court deem it desirable that every means should be tried of ascertaining the nature of the judgment already passed, previous to the adoption of any further measures which would be attended with much inconvenience; you will be pleased therefore to make strict enquiry among the parties and their wukeels, the moonsiff himself and the books of his office, for a copy or notes containing the substance of the decree. If such should be obtainable the moonsiff would be enabled from them to draw up another decree. It would also be advisable, where such documents are not to be found, that the parties and wukeels be questioned as to the nature of the decree passed, and if they agree on this point, the moonsiff may draw up his decree from their statement. If after every method has been tried some cases should still remain, regarding the judgment in which no information can be obtained or any doubt may remain, you will be pleased to report specially to this Court regarding them; stating fully the measures which you have adopted ineffectually with the view to discover the contents of the decree.

From the Judge of Zillah Moradabad to the Register of the Western Provinces, dated 23d July, 1834.

With reference to my letter of the 12th January, your letter of the 13th March, my letter of the 29th April, and your reply of the 10th May, 1833, I do myself the honor to state, that of the eleven plaintiffs in the eleven cases decided, the records of which were burnt in the cutcherry of the moonsiff of Rajpoorah, one plaintiff only, a bunyah named Heeraloll, who had obtained a decree for 129 rupees, half anna, has come forward to solicit that he may be permitted to institute a suit anew, or enforce the decree already obtained.

2. On his presenting a petition to that effect, I directed the defendant to attend, with a view to making the sort of enquiry pointed out in your letter of the 10th May, 1833. One defendant is dead; the other, his son, states that the case was at issue between his father, who is dead, and the plaintiff rather than with himself, that the demand was an unjust one, and that it was his intention to have appealed against the decision, when the papers being burnt, and he having no copy of the decree, he was unable to do so.

3. This defendant was supposed with his father to have made the attack on the cutcherry of the moonsiff, and to have burnt the records; they were tried on the charge by the magistrate of Suheswan but acquitted.

4. Of the eleven cases alluded to in my letter as decided, decrees had been passed in six, in two cases the amount decreed has been realized by the parties; in one the plaintiff holds the decree, a copy of which he has obtained; in two cases the parties have not appeared though notice was served on them: in the case of Heeraloll versus Kureemoolla and Shumsooddeen, I beg to be favored with the orders of the Court. A copy of my proceeding of the 14th ultimo is herewith forwarded.

From the Register of the Western Provinces to the Judge of Zillah Moradabad, dated 8th August, 1834.

I am directed by the Court to acknowledge the receipt of your letter of the 23d ultimo, regarding the records of the moonsiff's office destroyed by fire in August, 1832.

2. With regard to the case of Heeraloll versus Kureemoolla and another, the Court conclude that no note or memorandum of the moonsiff's decision has been found, and that your present reference is made in pursuance of the Court's orders of the 10th May, 1833: previous however to passing further orders, the Court request that you will ascertain, and state for their information, the date of the decree in question, for the purpose of determining whether the period of appeal had elapsed previous to the occurrence.

From the Judge of Zillah Moradabad to the Register of the Sudder Dewanny Adawlut, Western Provinces, dated 25th August, 1834.

I do myself the honor to acknowledge the receipt of your letter of the 8th instant, relative to the case of Heeraloll versus Kureemoolla and others, the records of which were destroyed by fire in the office of the moonsiff of Rajpoorah in August, 1832.

2. In reply, I beg to state that I had ascertained that there were no notes of the case in question, or memorandum of the moonsiff; that a decree was passed in favor of the plaintiff appears only by a list furnished after the occurrence from a memorandum which was in the hands of a wukeel of the moonsiff's court: the decree was passed on the 25th August, and the attack on the cutcherry of the moonsiff was made on the 29th of the same month, four days therefore had only elapsed from the date of the decree when the papers were destroyed.

To the Judge of Zillah Moradabad, dated 5th September, 1834.

I am directed by the Court to acknowledge the receipt of your letter of the 25th ultimo, in reply to the Court's order of the 8th of the same month.

2. As it appears that a decision was actually passed by the moonsiff in the case in question in favor of the plaintiff, you will be pleased to cause the moonsiff to draw up a decree to that effect, and having duly attested it to deliver copies to the parties agreeably to the regular practice of the court. It will be unnecessary and probably impracticable to mention the grounds of the decision, but if the moonsiff is able to do so there is no objection to his recording them. Any party considering himself aggrieved by the decision will be left to seek redress by appeal.

The Presidency Court, on the 3d October, 1834, *concurred in this construction.*

September 5th, 1834.

To the Officer in Charge of the Office of Judge of Rungpore, dated 5th September, 1834.

No. 897.

1799. Reg. XLV. Sec 2 1832 Reg. VII. Sec. 16.

I am directed by the Court to forward to you the accompanying copy of a letter from the judge of zillah Dacca, dated the 21st ultimo, No. 313, requesting to be informed, in consequence of a difference of opinion with you, whether "lands paying revenue can be "sold in satisfaction of decrees, being putnee talooks and other saleable tenures as con- "templated in Section 16, Regulation VII. 1832, without a report under Regulation "XLV. 1793, Section 2, to the commissioner of revenue."

2. The Court direct me to refer you to construction No. 349 of the printed constructions, and to observe that as the public sale of putnee and dur-putnee tenures in execution of decrees must be conducted by the collector, the report required by Section 2, Regulation XLV. 1793, must be made to the commissioner of revenue.

September 5th, 1834.

Extract from a Letter from the Judge of Zillah Dacca to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 23d June, 1834.

No. 898.

1806 Reg. XVII. Sec 8. Construction No 80, March 14th 1811, and No 105. June 25th, 1812.

Para. 5. I also beg such rule of practice to be informed if a mortgagee can, in the opinion of the Court, be admitted to sue for recovery of the amount mortgage money, without shewing good cause why he does not sue for the property mortgaged; also generally whether he has his election between them, to sue for whichever he may think most to his advantage.

To the Judge of Zillah Dacca, dated 5th September, 1834.

In continuation of my letter of the 11th July last, No. 1303, I am directed by the Court, to communicate to you, in reply to the question contained in the 5th paragraph of yours of the 23d June last, their opinion and that of the Western Court of Sudder Dewanny Adawlut, that if the mortgage in question be of the nature of a conditional sale, and the money be not repaid, the lender, unless good and sufficient cause be shewn, can only sue for possession of the property pledged, and has not the election of suing to recover the money or to be put in possession of the property, as he may deem most advantageous to his own interest.

September 5th, 1834.

From the Register of the Western Provinces to the Register of the Presidency Court, dated 12th September, 1834.

No. 899.

1834 Reg II. Sec. 3.

I am directed by the Court to request that you will submit, for the opinion of the Presidency Court, the following question which has arisen in the course of a correspondence with the session judge of zillah Gorruckpore.

2. Under the provisions of Section 3, Regulation II. 1834, the crime of "forgery" renders the offender still liable to a sentence of hard labor in irons; it is questioned

whether the term "forgery" used in the Regulation can be construed to comprehend the crime of issuing forged coin, documents, &c. knowing them to be forged.

3. The Court are of opinion that as the enactment is of a penal nature, the letter of it must be strictly adhered to, and that the crime of "knowingly issuing" would not therefore subject an offender to labor in irons.

The Presidency Court, on the 3d October, 1834, *concurred in this construction.*

September 12th, 1834.

To the Officiating Commissioner of Circuit for the 12th Division, dated 12th September, 1834.

No. 900.
58 Geo III Cap. 155, Sec 105. C. O N A. No 57. Sept. 3d, 1830.

I am directed by the Court to acknowledge the receipt of your letter of the 29th July last, No. 335, and its enclosures; and, with reference to the accompanying copy of a letter from the secretary to Government in the Judicial Department, dated the 8th instant, No. 1011, from which it appears that Mr. H. C. Hamilton is to be considered as possessing the full powers of joint magistrate at Monghyr, to inform you that, under the opinion of the advocate general, circulated for general information on the 3d September, 1830, no appeal lies to you from his order for fining Mr. John Mackay in the case of Ram Dyall versus Mr. John Mackay and others, although Mr. Hamilton is not vested with the powers of a justice of the peace, and to request that you recall and cancel the order passed by you on the 16th July last.

September 12th, 1834.

To the Judge of Zillah Furruckabad, dated 26th September, 1834.

No. 901.
Deputation of vakeels to make local enquiries.

I am directed by the Court to acknowledge the receipt of your letter of the 15th instant, requesting to be informed whether you are at liberty to depute vakeels of your court to make local enquiries as ameens.

2. In reply, I am directed to inform you that the Court are aware of no Regulation which prohibits the practice, but they consider the measure as of doubtful expediency in general.

The Presidency Court, on the 24th October, 1834, *concurred in this construction.*

September 26th, 1834.

To the Judge of Scharunpore, dated 26th September, 1834.

No. 902.
It is not competent to a court to attach the salary of a military officer in execution of a decree of court.

I am directed by the Court to acknowledge the receipt of your letter of the 12th instant.

2. In reply, I am directed to inform you that you are not competent to attach the salary of Arthur Hall, Esquire, of the 5th cavalry, in satisfaction of a decree of your court.

The Presidency Court, on the 24th October, 1834, *concurred in this construction.*

September 26th, 1834.

3 } October, 1834.
10 }

To the Commissioner of Circuit for the 13th Division, dated 3d October, 1834.

No. 903. 1813. Reg. II. I am directed by the Court to acknowledge the receipt of your letter of the 15th ultimo, (No. 1250) and its enclosures: and in reply to inform you that they concur in the opinion expressed by you that the provisions of Regulation II. of 1813, are still applicable to native officers employed in the commercial department entrusted with public money, and are not affected by the provisions of Regulation IX. of 1829.

The Western Court, on the 14th November, 1834, *concurred in this construction.*

October 3d, 1834.

To the Judge of Zillah Dacca, dated 3d October, 1834.

No. 904. 1814. Reg. XXVIII. Sec. 5. I am directed by the Court to acknowledge the receipt of your letter of the 18th ultimo, No. 351, and in reply to inform you, that a plaintiff originally admitted to sue as a pauper under Section 5, Regulation XXVIII. of 1814, who may subsequently, while the suit is pending, become possessed of property of sufficient amount to nullify his plea of poverty, may in the opinion of the Court, be called upon to pay up the original stamp duty in lieu of the institution fees, &c. under the penalty, in the event of his neglecting to do so, of being non-suited.

The Western Court, on the 7th November, 1834, *concurred in this construction.*

October 3d, 1834.

Extract of a letter from the Officiating Commissioner of Circuit for the 19th Division to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 16th Sept., 1834.

No. 905. 1793. Reg. XXXVI. 1812. Reg. XX. I beg strongly to urge the propriety of empowering one of the assistants stationed at Balasore to receive and register deeds presented to him by the inhabitants of that neighbourhood.

To the Officiating Commissioner of Revenue and Circuit 19th Division, dated 3d October, 1834.

I am directed by the Court to acknowledge the receipt of your letter of the 16th ultimo, No. 984, and its enclosure, and in reply to inform you that as Balasore is not the sudder station of a district, a registry office cannot, under the existing regulations, be established there.

October 3d, 1834.

To the Session Judge of Mympoorie, dated 10th October, 1834.

No. 906. An order for commitment made by a I am directed by the Court to acknowledge the receipt of your letter of the 25th ultimo, requesting the opinion of the Court whether an order of commitment made by

a joint magistrate residing at the sudder station without independent jurisdiction, is liable to reversal by the magistrate of the district.

joint magistrate residing at the sudder station without independent jurisdiction, is not liable to reversal by the magistrate of the district.

2. In reply, I am directed to inform you that a magistrate is not competent to reverse such a commitment, a power which can be exercised only by the session judge on trial of the case, or by the commissioner of the division.

The Presidency Court, on the 24th October, 1834, concurred in this construction.

October 10th, 1834.

To the Commissioner of Circuit for the 1st Division, dated 10th October, 1834.

No. 907.
1816.
Reg. XVII Sec. 7, Cl. 4—7.
1831.
Reg. XI. Sec. 8.

I am directed by the Court to acknowledge the receipt of your letter of the 24th ultimo, requesting the opinion of the Court whether a commissioner can receive appeals from subordinate police officers drawing a salary below ten rupees, who may have been dismissed by the magistrate.

2. The Court observe that the provisions of Clauses 4 to 7, Section 7, Regulation XVII. 1816, allow an appeal to officers of a certain specified description in cases of this nature; as however this Section has been wholly superseded, and the terms of Section 8, Regulation XI. 1831 include all police officers of whatever denomination, without reference to the amount of their salary, the Court are of opinion that appeals from such orders may be received from any police officer, whether his salary be above or below the sum of ten rupees.

The majority of the Calcutta Court, on the 7th Nov. 1834, concurred in this construction.

October 10th, 1834.

From the Register of the Western Provinces to the Register of the Presidency Court, dated 10th October, 1834.

No. 908.
1831.
Reg. V.
Sec. 26, Cl. 3 and 4.

I am directed by the Court to transmit, for the purpose of being laid before the judges of the Presidency Court, the annexed copy of a letter from the judge of Meerut of the 2d instant, and its English enclosures.

2. With reference to the concluding paragraph of the judge's letter, the Court propose to inform him that the respective powers of judges and commissioners, regarding the suspension of moonsiffs, are distinctly laid down in Clauses 3 and 4, Section 26, Regulation V. 1831. Clause 3 expressly vests the judge with the authority to suspend on urgent necessity; Clause 4 of the same Section also defines the power of a commissioner to extend to recommending the removal of a moonsiff, with the proviso that the recommendation shall be submitted to the Sudder Dewanny Adawlut through the judge: as the regulations do not therefore vest the commissioner with the power to suspend, the Court are of opinion that the commissioner in the case in question exceeded his

10 / 17 October, 1834.

powers, and should the Presidency Court concur, this opinion will be communicated to that officer and to the session judge.

The Presidency Court, on the 7th November, 1834, concurred in this construction.

October 10th, 1834.

From the Register of the Western Provinces to the Register of the Presidency Court, dated 17th October, 1834.

No. 909.

Held that under the urgent circumstances of the case, the commissioner of circuit (also superintendant of police) was justified in directly interfering with the management of a criminal jail

I am directed by the Court to transmit, for the purpose of being laid before the Presidency Court, the annexed copy of a letter from the commissioner of the Delhi division, dated the 29th ultimo, together with the original papers which accompanied it.

2. It appears that on the occasion of a riot attended with the escape of nine convicts from the jail of Hissar, the commissioner, in the absence of the magistrate, sent for certain prisoners from the jail with a view to holding an investigation; the commissioner also sent for and took the depositions of certain prisoners who were at work on the roads. The magistrate has objected to this exercise of authority, and the point in question is referred for the Court's decision.

3. Although it has been already ruled by the two Courts that a commissioner has no authority to interfere directly with the internal mangement of the jail by issuing direct orders to the jailor, the Court are of opinion that, under the urgent circumstances of the present case, the commissioner was fully authorized to act as he did, more especially as the magistrate was at a distance and much delay would have attended a reference to him; as superintendant of police also it was the duty of the commissioner to enquire strictly into the circumstances attending the very serious outrage which had occurred, attended, with the death of no less than fifty-two of the convicts; and he cannot therefore be considered to have exceeded his powers in sending for the prisoners with a view to hearing their statements on the subject.

4. Should the Presidency Court concur in this opinion, the commissioner will be informed accordingly. Whatever may be the decision on the point under consideration, the Court propose to express their entire disapproval of the order issued by the magistrate to the jailor, prohibiting him from attending to the requisitions of this nature made on him by the commissioner. It was obviously his duty to have complied with the orders of his superior officer on any doubtful point, pending a reference to a higher authority.

The Presidency Court, on the 14th November, 1834, concurred in this construction.

October 17th, 1834.

No. 910.

Course adopted in regard to signing a decision left unsigned by the late judge of the court in which it was passed.

To the Officiating Judge of Zillah Sylhet, dated 17th October, 1834.

I am directed by the Court to acknowledge the receipt of your letter of the 15th ultimo, requesting to be informed whether, under the circumstances stated, you could sign a decision left unsigned by the late judge, Mr. Campbell.

2. In reply, I am directed to inform you that you should examine the vakeels of the parties in whose presence the decision was given, and the person who wrote it out, and compare it with any note book in the hand writing of Mr. Campbell which may be forthcoming; and that, unless the result of these enquiries should lead you to doubt the genuineness of the decision, you should sign it—making a short memorandum explaining why it was signed by you.

October 17*th*, 1834.

To the Register of the Presidency Court of Sudder Nizamut Adawlut, dated 30*th Sept.*, 1834.

No. 911.

Power of a joint magistrate without independent jurisdiction to make commitments to the sessions.

I have the honor to beg you will ascertain from the Court whether an assistant with full powers of joint magistrate (as in the instance of Mr. Assistant Carruthers specially deputed by Government to Mymensing) can commit cases for trial before the session judge, without the sanction of the magistrate, when the latter is at the station, and has not formally made over his office to such assistant.

To the Commissioner of Circuit for the 15*th Division, dated* 17*th October*, 1834.

I am directed by the Court to acknowledge the receipt of your letter of the 30th ultimo, No. 54, and its enclosures: and in reply to inform you that as it appears from a letter from the secretary to Government to my address, dated the 22d ultimo, that Mr. M. W. Carruthers has been appointed joint magistrate in zillah Mymensingh, he is competent, under the sixth paragraph of the resolutions of Government of the 1st November, 1831, unless he has been expressly interdicted by the magistrate, to commit prisoners for trial to the sessions court, and that it is not necessary for the magistrate to revise his commitments.

October 17*th*, 1834.

From the Judge of Zillah Backergunge to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 25*th August*, 1834.

No. 912.

1800. Reg. I.

I have the honor to nominate, for the approval of the Court of Sudder Dewanny Adawlut, Rajchunder Chuckerbutty to act as the guardian of Mohesh Chunder Nag, a minor and heir to Gopee Kishen Nag, and Bhawanee Pershad Banerjee to act as guardian to Mussummaut Hur Mohunee, minor and heiress to Ram Kishen Chuckerbutty.

2. Copies of two proceedings dated 26th July, 1834, and two statements prescribed by the Court's circular orders of the 14th December, 1832, are herewith transmitted.

3. In forwarding the above documents to the Court, I beg leave to bring to its notice that the estates which are stated to belong to these minors, are tenures paying revenue to zemindars and others, and not immediately to Government.

4. Under these circumstances, I should have declined nominating guardians to the minors under the provisions of Regulation I. 1800, (which I had understood to provide for

the appointment of guardians only to heirs of joint undivided estates, paying revenue immediately to Government,) had not the practice of the former judges of this court been in opposition to my opinion on this subject.

5. I shall feel obliged therefore by your obtaining the Court's orders on this point for my future guidance.

To the Judge of Zillah Backergunge, dated 24th October, 1834.

I am directed by the Court to acknowledge the receipt of your letter of the 25th August last, and its enclosures, and in reply to inform you that the Court, being of opinion that there is nothing in the provisions of Regulation I. 1800, which restricts its application to the case of minor heirs of joint undivided estates paying revenue immediately to Government, sanction the appointment of the following guardians:

1. Rajchunder Chuckerbutty to be guardian of Mohosh Chunder Nag, minor heir of Gopee Kishen Nag.

2. Bhawanee Pershad Banerjee to be guardian of Mussummaut Hur Mohunee, minor heir of Ram Kishen Chuckerbutty.

October 24th, 1834.

To the Officiating Commissioner of Circuit, 11th Division, dated 31st October, 1834.

No. 913.
1819
Reg VII
Sec 6, Cl 3.

In reply to the question submitted in the 2d paragraph of Mr. C. W. Smith's letter, I am directed to inform you that the provisions of Regulation VII. of 1810, do not limit the sum which may be recovered in the criminal court as wages; and that, under the Court's construction contained in a letter to the commissioner of circuit of the 14th division, dated 7th January, 1831, (No. 582, of the printed construction book), the servant may sue in the criminal court to recover wages for any period not exceeding one year.

The Western Court, on the 28th November, 1834, *concurred in this construction.*

October 31st, 1834.

From the Secretary to Government in the Judicial Department to the Register of the Presidency Court of Nizamut Adawlut, dated 25th August, 1834.

No. 914.
1831
Reg IX Sec 3

I am directed by the Honorable the Vice-President in Council to transmit, for the information and guidance of the Court, the annexed copies of correspondence with the Court of Nizamut Adawlut at Allahabad, on the construction of Section 3, Regulation IX. 1831, and the powers vested in commissioners of circuit.

From the Register of the Western Provinces to the Secretary to the Government of Bengal in the Judicial Department, dated 25th July, 1834.

I am directed by the Court to transmit, for the perusal of the Honorable the Vice-President in Council, the annexed copies of minutes of the judges of this Court, and of a

correspondence which has taken place with the Presidency Court, relative to Section 3, Regulation IX. 1831.

2. A doubt has arisen with regard to the intention of the legislature in the provision of the Section above mentioned, the terms of which are far from being clear and precise, and have given rise to conflicting interpretations both in the Nizamut Adawlut and the subordinate courts, thus occasioning a variety of practice which it is very desirable to check by setting at rest the point in which they have originated. On a former occasion the Court communicated with the Presidency Court regarding the construction to be put on the enactment, when, as will be observed from the enclosed correspondence, that Court expressed their opinion that a reference on the subject should be made to the Government.

3. The question regards simply the meaning which should be attached to the words "cases of a miscellaneous nature other than criminal trials," which by that Section are declared exempt from the cognizance of the Courts of Nizamut Adawlut, and open to no appeal except to the commissioner of circuit in his capacity of superintendent of police, whose decisions are stated to be subject to revision only by a civil court on a regular suit.

4. The opinions of the judges of this Court, as well as those of the Presidency Court, will be found in the annexed correspondence. Mr. Sealy was absent on leave during the discussion, but I am directed to state that he considers the provision in question to have been intended to relieve the Courts of Nizamut Adawlut of the duty of hearing the numerous appeals presented from the decisions of the magistrates and their assistants; that with this view the Regulation withdrew from their cognizance all cases except "criminal trials," the term then generally used to designate cases regularly committed and tried at the sessions, declaring that all other cases should be appealable only to the commissioners as superintendents of police, from whose decision no further appeal lies to the Court of Nizamut Adawlut; that if the term "criminal trial" be understood with the latitude given it in the resolution of the 4th May, 1832, the Regulation would be attended with no relief to the Court. It will be observed that the opinions recorded are confined in a great measure to determining whether cases of particular descriptions can be understood as coming within the term.

5. As however cases are continually occurring which gives rise to doubt and discussion, from the uncertainty felt with regard to the intention of the legislature, the Court concur with the Presidency Court in deeming it highly advisable that the point should be finally decided by the Government.

MR. TURNBULL'S MINUTE.

The wording of the section is not so clear as could have been desired. But my reading of it is this. By Section 24, Regulation IX. of 1807, the Nizamut Adawlut—the then chief controlling authority over the whole of the criminal courts of inferior jurisdiction—was empowered to call for the proceedings of those courts in all cases of whatever

description, and to pass such orders thereon as might appear just and proper. It has been the obvious intention of Government in the enactments of late years, to limit the powers of this Court, to transfer a portion of its authority to the commissioners of circuit, and, in certain cases, to reserve the ultimate decision to itself. Thus in the section in question, Section 24, Regulation IX. of 1807, is declared to be modified, and the power of interference which was thereby vested in this Court, has been limited and is now restricted to *criminal trials*—that is, to cases involving a judicial investigation on a criminal charge and a judicial award. In all other cases, which as contra-distinguished from criminal trials, have always been understood as comprehended in the term "*miscellaneous*," and are therefore so designated in the section, the appellate authority has been transferred to the commissioners of circuit, with the reservation of further appeal to the Governor General in Council, in those cases in which the party deeming himself aggrieved, may prefer that course instead of resorting immediately to the civil courts, as in cases of forcible dispossession or other actionable cause, or in which the nature of the case may be such as not to admit of remedy by civil action, as in the cases of alleged injustice towards the native officers of Government, police or ministerial, by magistrates or others to whom they are subordinate. For the one the ordinary remedy by suit is provided, for the other by appeal to the Government.

The section in question was introduced by Government. It was not included in the original draft of Regulation IX. of 1831, as submitted by the Nizamut Adawlut at the Presidency; and although I have no doubt myself as to its true intent and meaning, it is certainly desirable, as suggested by Mr. Colvin, that the proper interpretation should be strictly defined and declared.

Resolution of the Presidency Court of Nizamut Adawlut, under date the 7th November, 1834.

Read a letter from the secretary to Government in the Judicial Department, dated the 25th August last, No. 1556, forwarding copy of one from the register of the Nizamut Adawlut in the Western Provinces to the secretary to Government in the Judicial Department, dated the 25th July last, and of the secretary's reply and the correspondence connected therewith, regarding the construction of Section 3, Regulation IX. of 1831.

2. The Court observe that the construction contained in Mr. Turnbull's minute of the 7th June, 1833, which the Honorable the Vice-President in Council requests, (in paragraph 2 of a letter of the secretary to Government in the Judicial Department to the register of the Nizamut Adawlut in the Western Provinces, dated the 25th August, 1834,) may be adopted by the Courts, is conformable to the present practice of this Court. It is however desirable that each judge should be furnished with a copy of Mr. Turnbull's minute and of the secretary's letter above cited, to be bound up with his Regulations. The register will accordingly be pleased to cause copies to be made for this purpose.

3. With reference to the 4th paragraph of the letter to the register of the Western Court above cited, the Court observe that the only order that has been issued to the commissioners regarding the exercise of the powers vested in them as superintendents of

914--915.

7 / 21 } Nov. 1834

police, is the circular order of the 26th October, 1832 As this merely enjoins caution in the exercise of the magisterial powers vested in them, and cannot be considered as "tending to lead those officers to suppose that they ought not to exercise the powers "vested in them by the Regulations," the Court do not deem it necessary to issue any orders modifying it.

November 7th, 1834.

From the Judge of Zillah Furruckabad to the Register of the Western Provinces, dated 11th November, 1834.

No. 915.
1801
Reg. V. Sec. 3, Cl. 1.

I have the honor to request the instructions of the Court on the following points :

1st. Deokenundun and Lawaram, plaintiffs, and Nundram, defendant, all reside in the village of Dhukraee, of which the revenue jurisdiction belongs to Furruckabad and the police and civil to Mynpoorie.

2d. Plaintiffs have sued defendant summarily for rupees forty-seven for rent and obtained a decree from the collector at Furruckabad.

3d. Nundram has petitioned that he intends to prosecute a suit in the civil court to reverse the decision, but that the moonsiff of Chibramowe, in this district, declines to receive the suit on the grounds that neither of the parties reside, nor has the cause of action arisen, within his jurisdiction.

4th. I conceive the suit to be cognizable in this district, because the summary decision, which is the cause of action, arose within its limits, and that the judge might at once receive the suit.

5th. But by Section 10, Regulation VII. 1832, these suits are declared cognizable by moonsiffs, and Nundram of course prefers the moonsiff's court from the smaller expense which will be incurred.

6th. As neither party reside within this district, the question is by what moonsiff is the suit cognizable ? Is it to be considered in that moonsiff's jurisdiction in which the collector's office is situated, or as the collector has authority over the whole district, is the suit receivable by any moonsiff within its limits—the residence of defendant furnishing no guide ?

7th. The present plaintiff, Nundram, prefers the moonsiff of Chibramowe, which is only three cos from his village, Dhukraee, whereas that village is thirteen cos from the city of Furruckabad and sixteen cos from Mynpoorie.

To the Judge of Zillah Furruckabad, dated 21st November, 1834.

I am directed by the Court to acknowledge the receipt of your letter of the 11th instant, requesting the opinion of the Court regarding a point of jurisdiction in certain cases.

2. In reply, I am directed to inform you that the case mentioned in your communication should be heard by the moonsiff of the Mynpoorie zillah, in which jurisdiction

the cause of action arose; the civil authorities of zillah Furruckabad, having no jurisdiction in the village of Dhukraee, cannot take cognizance of the plaintiffs' claim.

The Presidency Court, on the 5th December, 1834, concurred in this construction.

November 21st, 1834.

From the Judge of Zillah Dacca to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 8th September, 1834.

No. 916.

1806 Reg. 11 Sec. 5.

The circular order of the 17th February, 1816, No. 50, which contains directions as to the method of preserving lands attached for sale in satisfaction of decree from the sheriff of Calcutta, makes no reference to lands or property attached under Section 5, Regulation II. 1806, though for obvious reasons the precaution in such cases is equally necessary. This Court has been moved to attach certain indigo factories and indigo, the property of Mr. E. K. Hume; but unless some precaution of this nature be observed, there can be no difficulty in his obtaining, by some fiction of law, a counter-attachment from the Supreme Court; and then the prosecutors may look in vain to the attached property for the execution of the decree. I request you will bring this letter to the notice of the Court without delay, and I solicit instructions to depute an officer to remain on the spot and hold the property in attachment till countermanded. Under the provisions of the Regulation I do not feel authorized to take his step without authority of the superior Court.

To the Judge of Zillah Dacca, dated 21st November, 1834.

I am directed by the Court to acknowledge the receipt of your letter of the 8th September last, No. 333, and in reply to the question therein proposed, to inform you that the same course should be pursued in cases of attachment under Section 5, Regulation II. 1806, as when the attachment is made in execution of a decree, the ulterior object in both cases being the same.

The Western Court, on the 19th December, 1834, concurred in this construction.

November 21st, 1834.

From the Judge of Allahabad to the Register of the Western Provinces, dated 28th November, 1834.

No. 917.

Power of courts to return original powers of attorney after attesting them.

I beg to submit the following points for the orders of the superior Court:

2. A general power of attorney written on stamped paper of four rupees, as required in Schedule A, Regulation X. of 1829, has been presented for the purpose of being attested, with a request that it may be given back to the party after acknowledgment. The practice of this Court hitherto has been to retain such muktarnamehs, allowing individuals to take copies of them on the same stamped paper as prescribed for the original deed.

917—910

28 Nov } 1834
5 Dec. }

3 It appears to me that this practice subjects individuals to very unnecessary expense, and I beg to submit whether such powers of attorney may be given back to the parties after being duly attested or acknowledged.

To the Judge of Allahabad, dated 28th November, 1834.

I am directed by the Court to acknowledge the receipt of your letter of this date.

2. In reply, I am directed to inform you that you are at liberty to return the original powers of attorney described in your letter to the parties filing them, at your own discretion.

The Presidency Court, on the 2d January, 1835, *concurred in this construction.*

November 28th, 1834.

To the Judge of Zillah Dacca, dated 28th November, 1834.

No. 918.

Collector not competent to issue a perwaneh to a moonsiff, to sell property attached for arrears of revenue.

I am directed to acknowledge the receipt of your letter of the 6th instant, No. 389.

2. The Court, understanding your question to be whether a collector can, without application to the judge, issue a perwaneh to a moonsiff to sell personal property and houses attached by his nazir, for arrears of public revenue, direct me to communicate their opinion that he is not competent to do so.

The Western Court, on the 26th December, 1834, *concurred in this construction.*

November 28th, 1834.

From the Judge of Zillah Juanpore to the Register of the Sudder Dewanny Adawlut, Western Provinces, dated 25th November, 1834.

No. 919.

1831. Reg. V Sec. 5. 1814 Reg XXVIII. Sec. 4.

I request you will be pleased to obtain for me the opinion of the Sudder Dewanny Adawlut regarding the power of a moonsiff to try suits, instituted for the purpose of recovering damages, said to have been sustained from the lands of the plaintiff having been kept out of cultivation by the opposition of the defendant having prevented the plaintiff from receiving his customary share of water to irrigate his fields. Section 5, Regulation V. of 1831, declares that the cause of action shall be for money, or for real or personal property, or for the value of such real or personal property, and would imply that the thing sued for would not comprehend damages of the nature abovementioned; but the Regulation also defines what damages the moonsiff should *not* try, and these are damages for alleged personal injuries or for personal damages of any nature whatever, and under this definition cannot be included the loss which a person might sustain from not being allowed to cultivate his land as a "khoodkast" ryot, or from the loss he would sustain from the crops being scanty, occasioned by being deprived of the loss of his usual supply of water. The possessors of "seer" lands might also institute suits of this description. I have further to request the Court's construction of Section 4, Regulation XXVIII. of 1814, with respect to claims for damages of the nature above stated when instituted by paupers.

To the Judge of Zillah Jhanpoor, dated 5th December, 1834.

I am directed by the Court to acknowledge the receipt of your letter of the 25th ultimo.

2. In reply, I am directed to inform you, that suits brought by khoodkast ryots for damages sustained in consequence of ejectment, and claims for damages arising from being deprived of water for the purpose of irrigation, cannot be considered as coming within the prohibition contained in Clause 2, Section 5, Regulation V. 1831, which applies only to suits for damages of a personal nature and not to those for damage done to property; such suits are therefore cognizable by moonsiffs. With regard however to the first description of suits, I am directed to refer you to the circular order of the 15th November, 1833, which declares such claims cognizable by the collector under Regulation VIII. 1831.

3. In like manner the provisions of Section 4, Regulation XXVIII. 1814, do not apply to suits of the nature described by you, the prohibition contained in them extending only to suits for personal damages.

The Presidency Court, on the 26th December, 1834, *concurred in this construction.*

December 5th, 1834.

From the Officiating Commissioner of Circuit, 11th Division, to the Register of the Presidency Court of Nizamut Adawlut, dated 22d November, 1834.

No. 920.

Distance of residence in another district forms no ground for the rejection of the security of a person tendered by a prisoner under orders to give security for good conduct

Under the order of the Nizamut Adawlut, dated the 28th February, 1834, mitigating the security to be given by certain dacoits now lying in the jail of zillah Sarun, one of them by name Dabee Sing, son of Motee Sing, has got Prom Patuck Bhtdar, inhabitant of mouzah Nigeree Bulla Rai, pergunnah Maissy, to become his security in the prescribed amount of twenty-five (25) rupees, and the magistrate has reported the same to me.

2. It is obvious that an inhabitant of a village in the pergunnah of Maissy, zillah Sarun, can exercise no control or supervision over the conduct of this Dabee Sing, by profession a dacoit and resident of the Lucknow territories. If the security is merely intended as a form, upon being made acquainted with the same, I shall lose not a moment in instructing the magistrate to release the prisoner; if it is however intended that the security should be of any practical use, I submit to the Court that the present security is utterly insufficient.

To the Officiating Commissioner of Circuit, 11th Division, dated 5th December, 1834.

I am directed by the Court to acknowledge the receipt of your letter of the 22d ultimo, and in reply to communicate to you their opinion, that the security of Prem Patuck tendered by Dabee Sing cannot be rejected merely for the reasons stated by you.

December 5th, 1834.

921—924.

12 / 26 Dec 1834.

To the Officiating Judge of Zillah Chittagong, dated 12th December, 1834.

No. 921. 1793. Reg XLV. 1793. Reg. VII. Sec 10.

I am directed by the Court to acknowledge the receipt of your letter of the 25th ultimo, No. 34, and in reply to refer you to construction No. 349,* of the printed construction book, and to inform you that the Court are of opinion that the shikmy and other talooks alluded to by you should be sold in execution of decrees in the same manner as putnee talooks.

* See also Construction No. 807.

The Western Court, on the 23d January, 1835, concurred in this construction.

December 12th, 1834.

No. 922. 1814. Reg XXVIII Sec. 11, Cl. 3.

The Judge of Zillah Etawah, referring to Clause 3, Section 11 of Regulation XXVIII. of 1814, requested to be informed whether, in the event of a pauper and his sureties both absconding, the property of the latter can be sold in satisfaction of the costs and expenses awarded against the former in the decree.

The Court of Sudder Dewanny Adawlut for the Western Provinces held, that in the present state of the law the sureties for paupers are liable only to the penalty of imprisonment for six months prescribed by Clause 3, Section 11, Regulation XXVIII. 1814, in the event of the principals not appearing, and that the amount of costs due from the principal cannot be levied on the goods of the surety.

The Presidency Court, on the 26th January, 1835, concurred in this construction.

December 19th, 1834.

To the Commissioner of the 1st Division, dated 19th December, 1834.

No. 923. 1834. Reg. II. Sec. 2, Cl. 1.

I am directed by the Court to acknowledge the receipt of your letter of the 9th instant, with its enclosure, regarding a construction of Clause 1, Section 2, Regulation II. of 1834.

2. In reply, I am directed to inform you that as burkendazes, chowkedars, &c., found guilty of neglect of duty, were not formerly liable to stripes in addition to imprisonment, the provisions of Regulation II of 1834, in prohibiting the infliction of stripes, do not authorize an addition to the period of imprisonment to which they were liable previous to the issue of that enactment; the order passed by you in the case in question was therefore correct.

The Presidency Court, on the 16th January, 1835, concurred in this construction.

December 19th, 1834.

From the Joint Magistrate of Maldah to the Register of the Presidency Court of Sudder Nizamut Adawlut, dated 12th July, 1834.

No. 924. 1819. Reg. VII. Sec. 5.

I have the honor to submit for the consideration and orders of the Court, that a petition was presented to me by Mr. Alexander, an indigo planter in this jurisdiction, praying that I would take steps to apprehend a mohurrir of his, who had absconded and taken service in the zillah of Mymensing. I accordingly begged the magistrate of that district to take him into custody, conceiving that I was authorized to make this requisition

by the tenor of Regulation VII. of 1819, but he informs me in reply that the Regulation I quote has only reference to domestic servants and workmen, and that a servant of the description referred to cannot be apprehended.

2. I have therefore to solicit the Court's construction as to the legality of apprehending an absconded mohurrir under Regulation VII. of 1819.

To the Joint Magistrate of Maldah, dated 10th October, 1834.

I am directed by the Court to acknowledge the receipt of your letter of the 12th July last, requesting their opinion as to the legality of apprehending an absconded mohurrir under Regulation VII. of 1819.

2. Before answering your question the Court wish to know whether the mohurrir alluded to was a domestic servant or not, and accordingly request that you will report the nature of his service and the engagement under which it was performed.

From the Joint Magistrate of Maldah to the Register of the Presidency Court of Sudder Nizamut Adawlut, dated 11th December, 1834.

I have the honor to acknowledge the receipt of your letter No. 1942, under date the 10th of October, and in reply to state, for the information of the Court, that the person (Cossinath Chowdry) alluded to in my letter of the 12th of July was a gomashtah superintending one of Mr. Alexander's out-factories. The man cannot, I apprehend, be considered as a domestic servant. I beg to submit to the Court that Section 5 of Regulation VII. of 1819, is quite applicable to the case of this man, who, it will be perceived by the accompanying copy of his security bond, agrees to make over to his employer all money and accounts in his possession before quitting his situation. The inconvenience caused by a person of this description absconding is much greater than that occasioned by the unexpected disappearance of a domestic servant, and I humbly conceive that a gomashtah is to all intents a workman, though not employed as an artisan, or tiller of the soil.

To the Joint Magistrate of Maldah, dated 26th December, 1834.

I am directed by the Court to acknowledge the receipt of your letter of the 11th instant, reporting in reply to mine of the 10th October last, the nature of the service of the gomashtah alluded to in your's of the 12th July last, and the engagement under which it was performed.

2. As the gomashtah in question superintends an out-factory, he cannot, as you admit, be considered as a domestic servant, and the Court cannot concur with you that he is a workman. They are therefore of opinion, that the magistrate of Mymensingh was right in refusing to apprehend him.*

The Western Court, on the 23d January, 1835, concurred in this construction.

December 26th, 1834.

* On the 2d January, 1835, the Court held, that the provisions of Sec. 20, Reg. VII. 1799, are equally inapplicable to the gomashtahs and mohurrirs of indigo planters.

Abstract of a Letter from the Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny and Nizamut Adawlut, dated 9th January, 1835.

No. 925.

In case of fraudulently filing a petition in the civil court, the judge cannot commit for trial, but should refer to the magistrate.

The Court ruled that in the case of a defendant charged with presenting or filing a petition in the civil court with the fraudulent intent of obtaining money already paid to him, the judge is not competent to commit the accused for trial, but that after completing the investigation as far as may be in his power, he should transmit the papers to the magistrate, stating his opinion on the case and leaving the magistrate to commit or not as may appear to him advisable.

The Presidency Court, on the 27th March, 1835, concurred in this construction.

January 9th, 1835.

From the Commissioner of Circuit, 5th Division, to the Register of the Nizamut Adawlut, Western Provinces, dated 9th January, 1835.

No. 926.

1809. Reg. V. 1822 Reg. IX.

Having doubts as to the extent of jurisdiction possessed by the magistrate of Bareilly in a case now before his court, under the following circumstances, I have the honor to solicit the opinion of the Court of Sudder Nizamut Adawlut upon it. The reference from the magistrate's office and my reply thereto I also submit.

2. It appears that Khooraj, a cultivator, formerly a subject of the independant jagheer of Rampoor, but of which character he has been divested in consequence of three years continued residence in the village of Arrowh, district of Bareilly, was, on the 28th November last, forcibly carried off, while employed in his field, by five persons, inhabitants of a neighbouring village named Bulkerrah, situated in the foreign jagheer of Rampoor, to which village they took him, and that in the afternoon of the same day, seven persons, inhabitants of Arrowh and Bholapoor villages, in the British provinces, proceeded to Bulkerrah for the purpose of obtaining his release; that while there, a dispute arose which terminated in an affray, in which two of the British subjects were killed and two severely wounded, and one of the Rampoor men slightly so.

3. It does not appear that the seven persons who went to Bulkerrah from the two villages in the British provinces carried with them any offensive weapons, or were the aggressors in the present case.

4. All the persons concerned were apprehended, and with the assistance of the aumils of the jagheer brought in to Bareilly for trial before the magistrate.

5. Had the case been the violent seizure and carrying away of a subject of the British state by certain subjects of a foreign territory, the jurisdiction of the magistrate of Bareilly could not I suppose be questioned; but the fact of the subsequent proceeding at Bulkerrah, a village in the independant state of Rampoor, gives another character to the original offence, and appears materially to affect the question of jurisdiction. I would beg therefore to be informed, what course the magistrate ought to take in the present case, and whether in the Court's judgment the parties should be made over for trial to the Rampoor authorities, accompanied with the record and investigation of the case as far as these have been proceeded into.

From the Magistrate of Bareilly to the Commissioner of the 5th Division, dated 3d January, 1835.

In continuation of my roobukaree of the 5th ultimo, reporting the case of affray, &c which occurred between certain residents of Rampoor and some villages of Arrowh and Bholapoor belonging to Shairgurhi, in which two of the men on this side were killed and two severely wounded (one man only of the Rampoor party being wounded), I have the honor to forward copy of my proceedings of this day's date, detailing, as far as they have yet been ascertained, the particulars of the case, with a view of eliciting your opinion on two points connected with the further measures to be adopted.

From the Commissioner of Circuit of the 5th Division to the Magistrate of Zillah Bareilly, dated 6th January, 1835.

I have the honor to acknowledge the receipt of your letter of the 3d instant, with the foujdarry papers which accompanied it relating to the affray which took place in the village of Bholapoor in the jagheer of Rampoor, in which two British subjects were killed and two others severely wounded.

2. The fact of the principal offenders in the present case being the subjects of an independant state, of the crime having been committed in a foreign territory, of the circumstances which led to its commission originating in a British province,, and of the apprehension of the prisoners in a village of the jagheer, occasions doubts in my mind as to the extent of the jurisdiction which you possess in the case in question. I propose accordingly to make a reference on the points you have submitted for my opinion to the Court of Nizamut Adawlut, and will acquaint you with their decision when I receive it.

To the Commissioner of Circuit, 5th Division, dated 16th January, 1835.

I am directed by the Court to acknowledge the receipt of your letter of the 9th instant, with its enclosures, regarding a point of jurisdiction of the magistrate's court in a case of affray.

2. In reply, I am directed to inform you that the foreigners who have entered British territories, and there seized and carried away forcibly a British subject, are evidently liable to be tried by the magistrate of the zillah in which the offence was committed. With regard to the persons concerned in the affray which afterwards occurred beyond the frontier in an independant state, such portion of them as may come within any of the descriptions of persons laid down in Regulation IX. 1822, and the enactments therein referred to, are also liable to be tried by the British court of justice, should the Government, on a reference under Regulation V. 1809, think proper to direct such a measure. the foreigners however who were engaged in that act, and do not come within any of the descriptions abovementioned, are liable only to be tried by the laws of the state in which the offence was committed.

The Presidency Court, on the 31st January, 1835, concurred in this construction.

January 16th, 1835.

927—929.

16 / 20 Jan. 1835.

To the Judge of Zillah Mynpooree, dated 16th January, 1835.

No. 927. 1803. Reg. III Sec 16, Cl 7. 1799 Reg. V. Sec 7 • Corresponding with Section 7, Regulation V 1799.

I am directed by the Court to acknowledge the receipt of your letter of the 22d ultimo, regarding the manner in which unclaimed property sent in to the magistrate by the police officers should be disposed of.

2. In reply, I am directed to state that the Court concur with you in the opinion that the provisions of Clause 7, Section 16, Regulation III. 1803,* apply only to the property of persons dying intestate when no heirs are forthcoming; it appears to the Court more advisable that property sent in by the police should, agreeably to the general practice, be disposed of by the magistrate than that the time of the judge should be unnecessarily taken up in performing such duty.

The Presidency Court, on the 6th February, 1835, concurred in this construction.

January 16th, 1835.

To the Additional Judge of Zillah Dacca, dated 16th January, 1835.

No. 928. 1825. Reg. VII. Sec. 5, Cl. 1.

I am directed to acknowledge the receipt of your letter of the 29th ultimo, No. 467, and in reply to inform you that it has been ruled that inadequacy of price alone is not a legal ground for annulling an auction sale, and to communicate to you the Court's sanction to review the order passed by you in the case of

Ram Ruttun Chowdry, plaintiff,

versus

Kishen Chunder Doss, defendant.

Revd. H. Shepperd, claimant.

January 16th, 1835.

From the Register of the Western Provinces to the Secretary to the Government of Agra, dated 2d January, 1835.

No. 929. Competency of a magistrate to apprehend the subject of a foreign state, charged with murder or robbery who may take refuge in the British territory.

I am directed by the Court to transmit, for the perusal of the Honorable the Governor of Agra, the annexed copy of a correspondence with the Presidency Court, regarding the authority of the magistrates to apprehend persons accused of having committed crimes in a foreign territory.

2. The Presidency Court, it will be observed, are of opinion that all persons charged with murder and robbery, or with any crime amounting to felony, (it is presumed, under the English law,) committed in a foreign territory, may be apprehended by the magistrates. It seems, on the contrary, to the Court that those officers cannot be considered to have regular cognizance of any crimes committed beyond the British boundary; unless in so far as persons of the description mentioned in Regulation V. 1809, Section 2, Regulation VIII. 1813, Section 6, Regulation I. 1822, and Section 2, Regulation IX. 1822, are concerned in them, such persons being subjected to their authority by the special provisions of those Regulations, and that the apprehension of other persons charged

with committing a crime beyond the boundary cannot take place under the existing laws, unless the Government for state reasons think proper to direct such a measure. The Court observe that among European states this subject has been considered as of a purely political nature, and such offenders are not apprehended unless under the terms of some special article in a treaty requiring their apprehension, and by special order from the Supreme Government on the representation of the foreign state in which the crime has been committed. The Court are not aware what treaties may exist on this subject with the states adjoining British India, but they are of opinion that the same general rule must be applicable in either instance.

From the Secretary to Government of Agra to the Register of the Nizamut Adawlut, Western Provinces, dated 20th January, 1835.

I am directed to acknowledge the receipt of a letter from you, dated the 2d instant, No. 14, with its enclosures, and in reply to desire that you will inform the Court, that the Honorable the Governor concurs in opinion with the Nizamut Adawlut at Calcutta, viz. that a magistrate is competent to apprehend the subject of a foreign state, charged with murder or robbery, who may take refuge in the British territory.

January 20th, 1835.

To the Judge of Zillah Midnapore, dated 23d January, 1835.

No. 930. 1831 Reg VIII Sec. 8.

I am directed by the Court to acknowledge the receipt of your letter of the 3d instant, and in reply to inform you that in suits instituted under Section 8, Regulation VIII. 1831, the full fees of the pleaders must be deposited, the pleadings must be filed, and all the forms enjoined for the conduct of regular suits must be observed. The only exemption contemplated by the Section in question is the relinquishment, on the part of Government, of three-fourths of the stamp duty levied in lieu of the institution fee, with a view of inducing parties to institute regular instead of summary suits.

The Western Court, on the 27th February, 1835, *concurred in this construction.*

January 23d, 1835.

To the Commissioner of Circuit for the 17th Division, dated 31st January, 1835.

No. 931. 1797 Reg. XIV.

I am directed by the Court to acknowledge the receipt of your letter of the 17th instant, forwarding a petition from Cossinath Mitter, mokhtar of the individuals robbed in the case of Government *versus* Ram Lochun Mozemdar and others, convicted by you of burglary and theft and breach of trust at the second sessions of 1834 for N. E. Rungpoor, praying for an order to sell certain property of Bungo Chunder mohurrir, one of the convicted prisoners, and to appropriate the proceeds to repay the losses occasioned by the prisoner and his associates.

In reply, I am directed to observe that the provisions of Regulation XIV. 1797 (the spirit of which is still applicable to N. E. Rungpoor) prohibit the criminal courts from

awarding compensation or damages to individuals in any criminal prosecution, except a reimbursement of costs actually incurred, and that the party in question must be referred to a civil action.

January 31*st*, 1835.

BENGAL SECRETARIAT LIBRARY

Extract of a letter from the Officiating Judge of 24-*Pergunnahs to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated* 21*st January*, 1835.

No. 932.
1812.
Reg. XVI.

Para. 1. In the execution of *exparte* decrees of the Court of Requests under Regulation XVI. 1812, I beg the construction of the Sudder Dewanny Adawlut whether it is incumbent on me or not to issue the notice prescribed by Clause 8, Section 15, Regulation XXVI. 1814. In the foregoing Regulation it is laid down that the judge of 24-Pergunnahs proceed to execute the judgment in the mode prescribed by the existing Regulations for executing *his own decrees.*

2. Another point is whether, both parties being Europeans, I can do more than back any process that may issue from the Court of Requests; that is, if the plaintiff, a European British subject, applies in the usual form for execution against another individual, also a European British subject, can I proceed in the case?

To the Officiating Judge of 24-*Pergunnahs, dated* 6*th February*, 1835.

I am directed by the Court to acknowledge the receipt of your letter of the 21st ultimo, and in reply to inform you that in executing decrees of the Court of Requests under Regulation XVI. of 1812, you should proceed in all respects in the same manner as you would in executing a decree of your own court, and to refer you to the Circular Order of the 25th January, 1833, No. 79, of volume II. new edition, from which you will perceive that the fact of both parties being Europeans, does not in any way affect your cognizance of the matter.

February 6*th*, 1835.

From the Officiating Judge of Zillah 24-*Pergunnahs to the Register of the Court of Sudder Dewanny Adawlut, dated* 21*st January*, 1835.

No. 933.
1825.
Reg. VII.
Sec. 2, Cl. 2.

A practice has prevailed in this zillah, of executing sales of malguzaree houses, gardens, and orchards through the collector: in other zillahs I disposed of that kind of property through the moonsiffs. The wording of the Regulation itself is doubtful. In Clause 2, Section 2, Regulation VII. 1825, the connecting conjunction is used; and in Clause 3 of the same Section the disjunctive: in the 3d Section "or" is again used, but the preamble has "and." I think from the whole tenor of the Regulation that it was intended to sell houses with the parcels of grounds on which they are situated, although such grounds paid rent, as well as gardens and orchards so circumstanced, by means of the nazir or moonsiff; and for the facility of execution of decrees such a mode is highly

desirable to prevent litigation. I beg the orders of the Sudder Dewanny Adawlut on the subject. Ryots' houses, which are included in their tenure and jumma, do come within Section 4 of this Regulation; a muhlool is disposed of in this district through the collector.

To the Officiating Judge of Zillah 24-Pergunnahs, dated 20th February, 1835.

I am directed to acknowledge the receipt of your letter of the 21st ultimo, and in reply to inform you that the Court, having considered the wording of the preamble, and of the second Clause of Section 2, Regulation VII. 1825, in connection with that of the third Clause of Section 2, and of the first Clause of Section 3, are of opinion that houses, gardens, orchards, and small portions of land exempt from public assessment, are to be sold in the same manner as personal property by the civil courts; but that larger portions of land exempt from payment of revenue, and all land paying revenue to Government, however small, not being orchards or gardens, must be sold through the revenue authorities.

The Western Court, on the 20th March, 1835, *concurred in this construction.*

February 20th, 1835.

To the Judge of Zillah Jessore, dated 20th February, 1835.

No. 934.
1830 Reg. V. Sec 5.

In reply to your letter of the 7th instant, I am directed by the Court to communicate to you their opinion that a ryot cannot claim a settlement of his account under Section 5, Regulation V. 1830, till "the expiration of the period of his contract," and that if the ryot asserts that the planter is indebted to him for indigo plant, and refuses to pay him what he demands, the ryot must seek redress by a regular suit.

The Western Court, on the 13th March, 1835, *concurred in this construction.*

February 20th, 1835.

To the Judge of Zillah Tirhoot, dated 20th February, 1835.

No. 935.

On the subject of the distribution of sums of money in deposit in Court, when the amounts may be insufficient to meet

I am directed by the Court to acknowledge the receipt of your letter of the 17th ultimo, requesting to be informed whether priority of application for attachment of property in execution of a decree, gives a decree-holder a right to have his decree satisfied in preference to other claimants.

2. In reply, I am directed to forward for your information the accompanying copy of a letter from the register of the Court of Sudder Dewanny Adawlut, Western Provinces, dated the 31st July last and of this Court's reply of the 22d August.

From the Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 31st July, 1834.

As it appears that much diversity of opinion and practice prevails with regard to the rules for distributing in liquidation of claims under various decrees of court, sums of

money which may be in deposit and are inadequate to meet the whole demand, the Court direct me to request that you will bring the subject to the notice of the judges of the Presidency Court.

2. The Court understand the present practice, under the sanction of the Presidency Court, to be as follows: the mere priority of date gives no preference to a decree, but that all decrees under which process of attachment has been issued, provided they are dated previous to the distribution of the deposit, entitle the holders to share in proportion to the amount of their claim; with the exception of cases in which a bonâ fide mortgage of the deposit in favor of a particular claim may exist. The Court do not think it necessary to enter into a discussion as to the propriety of the practice, but they are of opinion that some rule on this head should find a place in the civil regulations now under preparation by Mr. Millett, to ensure uniformity of practice, especially among the native judicial officers, who will look to that enactment, when prepared, as their sole guide and manual. The Court have been led to mention this subject in consequence of a reference which has been made to them; from this communication it would appear that the above rule of practice is by no means generally known even among the European functionaries.

To the Register of the Court of Sudder Dewanny Adawlut, Western Provinces, dated 22d August, 1834.

I am directed by the Court to acknowledge the receipt of your letter of the 31st ultimo, on the subject of the diversity of opinion and practice which prevails with regard to the rules for distributing, in liquidation of claims under various decrees of court, sums of money which may be in deposit, and are inadequate to meet the whole demand.

2. In reply, I am directed to observe that the practice, as generally followed, appears to be as stated by you, and that your letter will, as suggested by the Western Court, be laid before Mr. Millett, with a view to the insertion of some provisions to meet the difficulty, in the regulation he is now preparing.

February 22d, 1835.

From the Register of the Western Provinces to the Register of the Presidency Court, dated 6th March, 1835.

No. 936.

1793.

Reg. XVI. Sec. 3.

I am directed to request that you will submit, for the opinion of the judges of the Calcutta Court, the following point of law which has arisen in this Court.

2. Under the provisions of Section 3, Regulation XVI. 1793, a judge is empowered to refer to a single arbitrator any suit for money or personal property, the amount or value of which may not exceed 200 rupees; suits exceeding that amount cannot be referred by the judge to a single arbitrator. A doubt has arisen whether this restriction applies to summary suits for arrears of rent or merely to regular suits. The Court are of

opinion that under the terms of the Regulation, which are general, the restriction must be construed to apply to suits of all descriptions. Before acting upon this construction however they are desirous of learning the opinion of the judges of the Calcutta Court.

3. The Court observe that the above restriction is not intended to apply to suits referred to private arbitration by individuals under Section 3, Regulation VI. 1813.

The Presidency Court, on the 27th March, 1835, concurred in this construction.

March 6th, 1835.

From the Officiating Commissioner of Circuit, 15th Division, to the Register of the Presidency Court of Nizamut Adawlut, dated 23d February, 1835.

No. 937.

Circular Order, 10th December, 1830, regarding hauts.

In the year 1827 a dispute occurred as to a haut in zillah Sylhet in which Kasheenath and Ramruttun were parties; and after much contention the case went to the Nizamut Adawlut, and it was ruled by Mr. Courtney Smith that Kasheenath's market should be held on the two days named in the proceeding of the magistrate, which Mr. Smith confirmed of date 25th April of that year, Mr. Ross concurring in May following.

2. The same parties are now again in dispute about the same haut; and although there is a circular of date the 10th December, 1830, by which it would seem that the magistrate cannot interfere in any case, yet I should think that this rule must be a prospective one—otherwise of what value does Mr. Smith's decision and that of his colleague become?—I should be glad however to be favored with the opinion of the Court on the question before passing any final order.

To the Officiating Commissioner of Circuit for the 15th Division, dated 20th March, 1835.

I am directed by the Court to acknowledge the receipt of your predecessor's letter of the 23d ultimo, No. 13, and in reply to inform you that the summary order passed by Mr. C. Smith and Mr. Ross, fixing the days on which the respective hauts of Kasheenath and Ramruttun should be held, must be considered in full force until it be set aside by a decision in a regular civil suit, notwithstanding the circular order of the 10th December, 1830, cited by you, which applies only to new disputes regarding hauts, with which the magistrate should not interfere unless it may be necessary to prevent a breach of the peace.

March 20th, 1835.

Extract from a letter addressed to the Officiating Judge of Zillah Chittagong, dated 20th March, 1835, *in reply to his letter of the 4th March*, 1835.

No. 938.

1793. Reg V. Sec 21. Reg. IV. Sec 10 Circular Order, 4th November, 1812.

Para 2. In reply to your 2d paragraph I am directed to inform you, that in the event of an appellant neglecting for a period of six weeks to do any act required, you are at liberty, if he has appointed a vakeel, to call upon him to shew cause for the neglect,

and strike off the appeal in the event of satisfactory reason not being given; but that if the appellant is not in attendance, either in person or by vakeel, the notice prescribed by the circular order of the 5th November, 1812, must be served upon him requiring him to shew cause why his appeal should not be struck off.

March 20th, 1835.

To the Commissioner of Assam, dated 20th March, 1835.

No. 939. Slavery in Assam.

I am directed by the Court to acknowledge the receipt of your letter of the 20th January last, requesting to be informed how you should proceed in the case of individuals asserting that they are detained in slavery, although neither born slaves nor purchased.

2. In reply, I am directed to inform you that the Court are of opinion that if the party, alleged to be a slave, complain that he is detained by violence, the enquiry should in the first instance be entered into in the criminal department, and if violence be proved, redress should be afforded to him, and the opposite party referred to a civil action to prove his claim.

The Western Court concurred in this construction.

March 20th, 1835.

To the Register of the Western Provinces, dated 27th March, 1835.

No. 940. 1809. Reg VIII Sec. 9. 1831 Reg. XI.

I am directed by the Court to acknowledge the receipt of your letter of the 23d January last, No. 30, and in reply to observe that it has been determined by the circular order of the 8th April, 1818, prior to the enactment of Regulation XI. of 1831, that the magistrate's order in regard to the appointment and removal of native officers receiving salary not exceeding ten rupees was in every respect final, and to state that the Court concur with the judges of the Agra Court that the rule remains in full effect in regard to all such officers, not being officers of police, who, under Section 8, Regulation XI. 1831, may appeal to the commissioner.

March 27th, 1835.

Extract from a letter, under date the 3d April 1835, *addressed to the Commissioner of the 1st Division, in reply to his letter of the 14th March of the same year.*

No. 941. Right of appeal while evading execution of a magistrate's sentence.

I am directed by the Court to acknowledge the receipt of your letter of the 14th ultimo, with its enclosure, requiring to be informed whether you were competent to admit an appeal under the circumstances therein detailed.

2. The objections to the admission of the appeal urged by the magistrate is, that appellant had evaded the execution of the sentence passed on him by the magistrate; the Court observe however that as the appellate authority is competent to direct the suspension of the magistrate's sentence, should such a measure appear advisable, pending the proceedings in the appeal court, there can be no doubt that you were at liberty

to exercise your discretion in admitting the appeal. If the appeal were subject to the restrictions which the magistrate wishes to impose on it, the object of the party in appealing would be often totally defeated: and in the present case the accused must have submitted to the degradation of imprisonment in the criminal jail, before he could have obtained the reversal of the sentence passed on him by the magistrate.

The Presidency Court, on the 24th April, 1835, concurred in this construction.

April 3d, 1835.

Proceedings of the Western Court under dates 7th November, 1834, 2d January and 3d April, 1835, and of the Calcutta Court under dates 28th November, 1834, 20th February and 1st May, 1835.

No 942

1805
Reg 11 Secs 2 & 3
1793
Reg XXII Sec 35, Cl 10.

The following questions were put by the judge of zillah Goruckpore, on the 27th October, 1834:

First.—Does the limitation prescribed in Regulation II. 1805, apply to a claim for a share of an ancestral undivided estate, still held by a descendant of the family, in which estate the plaintiff had no manner of possession, either as a sharer of a specific portion, or as receiving a maintenance therefrom, during a period exceeding twelve years antecedent to the institution of the suit, no good cause (minority and the like) of course being shown to excuse the delay?

Second.—Can a person who still holds, or within twelve years has held, possession of a portion of land in an ancestral undivided estate as maintenance, claim to have the estate divided, and his specific share thereof allotted to him? or can the circumstance of his having been content with a maintenance, and not having received a specific portion for a period exceeding twelve years, bar his claim to a separate possession of his own share whenever he thinks fit to demand it.

The Court of Sudder Dewanny Adawlut for the Western Provinces, in concurrence with the opinion of the judges of the Court in Calcutta, ruled in reply to the first question that the limitation prescribed in Regulation II. 1805, was applicable to claims of the nature therein specified.

With reference to the second question, the judges of the Western Court and the majority of those of the Calcutta Court, were of opinion that, according to the spirit of Clause 10, Section 35, Regulation XXII. 1795, the person who had agreed to receive a maintenance, or, as the regulation expresses it, an allowance either in money or in land, from the principal putteedar, in consideration of his right, has no claim to personal possession or management of any part of the estate.

April 3d, 1835.

Extract of a letter from the Secretary to the Government of Bengal to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 7th April, 1835.

No. 943

1822
Reg VI Sec 3, Cl 2

I am directed by the Honorable the Governor of Bengal to acknowledge the receipt of your letter dated the 6th ultimo, with its enclosures, relative to the construction of

943- -944

7 / 10 April, 1835

Clause 2d, Section 3, Regulation VI. of 1822, and to inform you, in reply, that His Honor concurs in opinion with Mr. Braddon and the judges of the Sudder Court at Allahabad.

2. The whole tenor of Regulation VI. of 1822, as far as it relates to the farming of wards' estates, is, the Governor observes, purely declaratory; and it was avowedly enacted to remove doubts on that score, which the legislature in no wise admits to have been well founded. Clause 2d, Section 3, when taken in its natural connection with the second period of the preceding clause, must be held to include all the parties whose farms were retrospectively declared to be to "all intents and purposes legal and valid."

Mr. Braddon's Minute.

Regulation VI. of 1822 was enacted to remove all doubts of the legality of a system, which has prevailed for a period of many years. Clause 1 of Section 3 declares all antecedent farms, made under the authority of the Court of Wards, legal and valid. Clause 2 of that Section renders individuals holding such tenures subject to the same rules and regulations as are applicable to other persons holding farms under the collectors of the land revenue, and although this clause is not so clearly worded as it might have been, I am of opinion that it was intended to have a retrospective as well as prospective operation; in fact, had it been otherwise it would have been tantamount to declaring any sale that had already taken place liable to be annulled, upon the complaint of the defaulter whose property might have been sold by the collector for the recovery of the balance due from him.

From the Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 6th February, 1835.

I am directed by the Court to acknowledge the receipt of your letter of the 23d ultimo, enclosing minutes of the judges of the Calcutta Court, regarding a construction of Regulation VI. 1822.

2. In reply, I am directed to state that the Court concur in the view of the enactment taken by Mr. Braddon. Although the farm was taken previous to the passing of the Regulation, it was rendered legal and valid by Clause 1, Section 3; and by Clause 2, of the same Section, the farmer became liable to the rules applicable to other persons holding farms from the collectors, and among the rest to have his estates sold for arrears of rent. The sale, it is observed, took place after the regulation had been passed.

Extract of a letter from the Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 10th April, 1835.

No. 944. 1831. Reg. IX Sec. 2, Cl 2—4.

I am directed by the Court to transmit, for the perusal of the judges of the Calcutta Court, the annexed copy of a minute* of Mr. Ewer, one of the judges of this Court, containing his opinion regarding a point arising out of the provisions of Regulation IX. 1831.

* The view taken in the minute having been over-ruled, it has not been considered necessary to print that document

2. The other judges of the Court are of opinion that no final decision of the Court can be passed against a respondent until he has been summoned in the usual course.

The Presidency Court, on the 1st May, 1835, concurred in this construction.

April 10th, 1835.

To the Judge of Zillah Myapoorie, dated 24th April, 1835.

No. 945.
Circular Order, 24th Jan. 1834, No. 100.

I am directed by the Court to acknowledge the receipt of your letter of the 6th February last, regarding the circular order of the 24th January 1834.

2. In reply, I am directed to inform you that you appear to have rightly understood the circular order; no stamp duty would be leviable in pauper cases instituted in the judge's court and afterwards referred to moonsiffs for decision.

The Presidency Court, on the 29th May, 1835, concurred in this construction.

April 24th, 1835.

From the Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 24th April, 1835.

No. 946.
1831
Reg VIII.

I am directed by the Court to send, for the perusal of the judges of the Calcutta Court, the annexed copies of a letter from the Board of Revenue under date 3d instant, and its enclosure.

2. With reference to the spirit of the provisions of Regulation VIII. 1831, the Court are of opinion that it was the intention of the legislature to render suits of the nature described by the collector of Banda cognizable by the revenue authorities; and this course appears the more advisable mode of proceeding from the nature of the points which would come under investigation before the officer entrusted with the duty of deciding them. Previously to replying to the Board of Revenue, the Court are desirous of learning the opinion of the Calcutta Court on the point in question.

From the Secretary of the Sudder Board of Revenue to the Register of the Western Provinces, dated 3d April, 1835.

I am directed by the Board of Revenue to request that you will lay before the Court the accompanying letter from the collector of Banda, submitting a question regarding jurisdiction in summary suits, on which the Board beg to be favored with the Court's opinion.

From the Collector of Zillah Banda to the Secretary to the Sudder Board of Revenue, Allahabad, dated 25th March, 1835.

I request you will obtain for me the opinion of the Sudder Board of Revenue on the following question.

2. Are summary suits instituted by malgoozars, against putwaries and other native agents employed by them in the management of their estates, under Section 37,

Regulation XXVIII. of 1803, cognizable by the civil courts; or is the jurisdiction in such cases transferred by Regulation VIII. of 1831. to the revenue authorities?

The Presidency Court, on the 22d May, 1835, concurred in this construction.

From the Judge of Zillah Juanpore to the Register of the Sudder Dewanny Adawlut, Western Provinces, dated 18th April, 1835.

No 947. 1831. Reg V Sec 22. 1832 Reg. VII. Sec. 7.

By Section 22, Regulation V. of 1831, principal sudder ameens are authorized to execute their own decrees "under the general rules prescribed for the execution of decrees passed by the zillah and city judges." Under this authority the principal sudder ameen always issued orders for the confinement of defendants in the execution of decrees, without requiring any sanction from the judge. Moonsiffs by the above Regulation, Section 11, were prohibited from executing their decrees without first receiving the sanction of the judge. This mode appears to have been considered objectionable, and, by Section 7, Regulation VII. of 1832, the section above quoted was repealed, and permission was granted to the moonsiffs to execute their own decrees without reference to the judge, provided that no defendant be confined without the sanction of the judge.

2. It is quite clear to me that the intention in framing this regulation was to give an increased authority to the moonsiffs and sudder ameens by Section 22, Regulation V. of 1831. Yet the proviso in Section 7, Regulation VII. of 1832, is so inaccurately worded as to have occasioned an alteration in the power granted to the principal sudder ameen, contrary, I think, to the intention of the legislature. The proviso declares that "the rule in question regards all the officers above named," by which I understand all sudder ameens and moonsiffs; and had it not been for the Persian translation, I should have acted on this interpretation. The translator, instead of adhering strictly to the words used in the proviso "all the officers," has introduced the word principal sudder ameen, which does not appear in the English copy; and on this account the present rule of requiring the principal sudder ameen to transmit the defendants has been adopted.

3. Regarding the rule to be contrary to the intent of the regulation, I have to request the Court's opinion on the subject.

To the Judge of Zillah Juanpore, dated 1st May, 1835.

I am directed by the Court to acknowledge the receipt of your letter of the 18th ultimo.

2. In reply, I am directed to inform you that in the opinion of the Court the proviso contained in Section 7, Regulation VII. 1832, was intended to apply to principal sudder ameens and moonsiffs, and that consequently the former are not competent to confine a defendant without the sanction of the judge.

The Presidency Court, on the 22d May, 1835, concurred in this construction.

May 1st, 1835.

From the Officiating Judge of Dacca to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 22d April, 1835.

No. 948.
1800.
Reg. I. Sec. 4.

I beg to be informed whether in the opinion of the Court a security bond taken under Section 4, Regulation I. of 1800, on the appointment of a person as guardian, can be given up to the surety, on the resignation of the guardian at a period prior to the minor's coming of age.

2. The regulation only requires hazirzamin: I should therefore think the bond ought to be given up; but in a case now before me the deed has been drawn out and signed for hazir and malzamin. However, if that is contrary to the regulation it should nevertheless be given up.

To the Officiating Judge of Dacca, dated 1st May, 1835.

I am directed by the Court to acknowledge the receipt of your letter of the 22d ultimo, No. 133, and in reply to inform you that the bond in the case therein alluded to, should be retained in the custody of the court until the lapse of twelve years from the resignation of the trust, or from the date of the minor's attaining his majority, unless the minor on coming of age should consent to its being restored to the parties concerned.

May 1st, 1835.

No. 949.
1814.
Reg. XXVIII. Sec. 16, Cl. 1.

Held by the Calcutta Court, in concurrence with the Western Court, on a reference from the officiating judge of 24-Pergunnahs, under date the 16th April last, that a principal sudder ameen is not authorized to receive an answer to a plaint from a defendant *in formâ pauperis*, without the sanction of the judge, it being a principle that the judge only can determine the question of pauperism.

The Western Court, on the 5th June, 1835, concurred in this construction.—Letter to the Officiating Judge of 24-Pergunnahs, issued 19th idem.

May 1st, 1835.

From the Judge of Zillah Cuttack to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 20th April, 1835.

No. 950.
1831.
Reg. V. Sec. 5.

I request you will be pleased to obtain for me the orders of the Court of Sudder Dewanny Adawlut on the following points connected with Regulation V. of 1831:

1st. If a person lays claim to a piece of land, which both parties allow to be exempt from the payment of Government revenue, and on which a house is situated, and the purchase money in the deed of sale includes the price of the land and building: can such a suit, being for the possession of rent free land, be tried by a moonsiff under the provisions of Section 5 of the Regulation?

2d. If suits brought by lakhirajdars against occupants, for the rent due to them for their lakhiraj lands, are cognizable by moonsiffs.

3d. If vakalutnamahs in regular suits pending before moonsiffs, and applications presented to them for the execution of decrees, are to be written on stampt or may they be received on unstampt paper?

Held by the Calcutta Court, in concurrence with the Western Court, that suits of the nature described in the first question are not cognizable by moonsiffs.

The word "property" in Clause 3, Section 5, Regulation V. 1831, means the proprietary right in, not the rent of, land exempt from the payment of revenue. Suits therefore for the rent of lakhiraj land are cognizable by moonsiffs, where that point alone is in question.

Vakalutnamehs in moonsiffs' courts, and applications to them for the execution of decrees, may be received on unstampt paper.

The Western Court, on the 10th July, 1835, concurred in this construction.—Letter to the Judge of Cuttack, issued 24th idem.

May 1st, 1835.

From the Judge of Zillah Juanpore to the Register of the Western Provinces, dated 25th April, 1835.

No. 951.

1831.

Reg VIII. Sec. 15.

I request that you will be pleased to ascertain for me the opinion of the Court, regarding suits which may be referred for investigation under Section 15, Regulation VIII. of 1831. In the event of their being transferred to the subordinate tribunals, are they to be entered and tried as regular suits in the same manner as suits rejected by the collectors under Section 9, or should they be regarded as summary suits and entered under the miscellaneous head? In the suits referred, it will of course be necessary, when the principal point in litigation on which the plaintiffs objected to pay revenue has been disposed of by the regular suits, to enquire into the amount actually due, which, in cases before the moonsiffs, should be regarded as the decision of a regular suit by that officer.

To the Judge of Zillah Juanpore, dated 8th May, 1835.

I am directed by the Court to acknowledge the receipt of your letter of the 25th ultimo.

2. In reply, I am directed to inform you that suits transferred to the subordinate judicial tribunals under the provisions of Section 15, Regulation VIII. 1831, must be entered and tried as regular civil suits.

The Presidency Court, on the 22d May, 1835, concurred in this construction.

May 8th, 1835.

From the Register of the Western Provinces to the Register of the Presidency Court, dated 15th May, 1835.

No. 952.

Held that in a criminal trial in which differing opinions have been recorded, the sentence should issue agreeably to the opinion

In a criminal case now before the Court, in which the opinions of all the judges have been recorded, a difficulty has arisen regarding the issue of sentence. The case includes six prisoners, and the sentences recorded are as follows:

Mr. Ewer convicts and sentences to imprisonment for life at Allipore, Nos. 1, 2, 3, 4 and 6, and No. 5 to imprisonment for life at Cawnpore.

of the majority as regards each prisoner and that where the difference relates merely to the amount of punishment, the most lenient sentence should be adopted

Mr. Turnbull, Nos. 1 and 5 to imprisonment for life at Cawnpore, and Nos. 2, 3, 4 and 6 to imprisonment for 14 years at Cawnpore.

Mr. Colvin acquits the whole.

Mr. Lambert sentences Nos. 1, 2 and 5 to imprisonment for life, and Nos. 3 and 6 for 14 years at Cawnpore; acquits No. 4.

Mr. Dick acquits the whole.

Nos. 1, 2, 3, 5 and 6 have therefore been convicted by three judges and acquitted by two; the convicting judges differing with regard to the amount of punishment awarded against Nos. 2, 3 and 6: the prisoner No. 4 is convicted by two judges and acquitted by three. The Court request to be informed what has been the practice of the Calcutta Court in issuing sentence under such circumstances. Messrs. Ewer, Colvin and Lambert are of opinion that the sentence should issue agreeably to the opinions of the majority as regards each prisoner; and that where the difference relates merely to the amount of punishment, the most lenient should be adopted unless there is a majority in favour of the more severe punishment.

To the Register of the Sudder Dewanny and Nizamut Adawlut, Western Provinces, dated 3d July, 1835.

I am directed by the Court to acknowledge the receipt of your letter of the 15th May last, No. 23.

2. In reply, I am directed to state that the only case at all similar to the criminal one therein submitted which can be found, is that of Government *versus* Moossummat Umbeeka and Nizam Shah, (see page 154 of volume IV. of Nizamut Reports,) in which the opinions of the judges of this Court were as follows:

Mr. Walpole would have sentenced Umbeeka, No. 1, to death, and Nizam Shah, No. 2, to perpetual imprisonment.

Mr. Rattray—both prisoners to death.

Mr. Shakespear—both to imprisonment for life.

Mr. Ross—both to death.

3. As the voices in regard to Nizam Shah were equal, the trial was referred, under Section 9, Regulation IX. 1831, to the Court at Allahabad, and Mr. Sealy one of the judges of that Court, concurred in a sentence of imprisonment for life against Nizam Shah, and stated that had his opinion regarding Moossummat Umbeeka been asked, he would have sentenced her to death. A capital sentence was issued against Moossummat Umbeeka under the signatures of Mr. Ross, Mr. Rattray and Mr. Walpole, and one of imprisonment for life under the signatures of Mr. Shakespear and Mr. Walpole, Mr. Sealy's name being entered as concurrent in the heading of the sentence body sheet of the latter.

4. Under Section 9, Regulation IX. 1831, the Western Court would be competent either to refer the trial before them to this Court, in the same manner as the case of Nizam Shah was referred to them, for a concurrent majority, or to re-consider their opinions. In the event of its not being deemed necessary to make the

ference, this Court concur in the opinion expressed by Messrs. Ewer, Colvin and Lambert—"that the sentence should issue agreeably to the opinions of the majority as "regards each prisoner; and that where the difference relates merely to the amount of "punishment, the most lenient sentence should be adopted."

To the Judge of Zillah Cuttack, dated 22d May, 1835.

No. 953.
Moonsiffs not liable to deduction from salary when absent with permission, on any established holiday

In continuation of my letter of the 3d April, No. 1018, I am directed by the Court to inform you that moonsiffs are not liable to a deduction from their salaries when absent from their stations with the permission of the judge on any of the established native holidays.

The Western Court, on the 8th May, 1835, concurred in this construction.

May 22d, 1835.

From the Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 29th May, 1835.

No. 954.
1831.
Reg. IX Sec. 3.

I am directed by the Court to transmit for the perusal of the judges of the Calcutta Court the annexed copy of a minute of one of the judges of this Court.

2. With reference to the point of law therein set forth, the majority of the Court are of opinion that under the provisions of Section 3, Regulation IX. 1831, they are not competent to interfere with the order of the commissioner and magistrate, the case being of a miscellaneous nature and consequently not within their cognizance.

3. Before passing any final order, the Court are desirous of learning whether the Calcutta Court concur in this construction of the Regulation.

Mr. Colvin's Minute.

A magistrate, on the report of a thanadar that an affray is to be apprehended between the zemindar and the moostajeers of Ghatumpore, causes them to execute a moochulka to keep the peace under a penalty of 200 rupees, and an affray taking place some time after between their respective dependants, without any proof being adduced against them individually either of being present or of encouraging or causing it, he exacts the amount of the moochulka from them. The commissioner confirms the order and the zemindar appeals to this Court. Can his appeal be heard under Section 3, Regulation IX. 1831, or must the case be considered a miscellaneous one with which we cannot interfere?

To the Register of the Western Provinces, dated 26th June, 1835.

I am directed by the Court to acknowledge the receipt of your letter of the 29th May last, No. 31, and its enclosures, and in reply to communicate to you their concurrence in the opinion of the majority of the judges of the Court of Nizamut Adawlut for the Agra Presidency, that the case therein stated should be considered as a miscellaneous one, to which consequently the provisions of Section 3, Regulation IX. 1831 apply, limiting any notice of them by the superior Court to a representation to Government in those instances that may require it.

From the Judge of Tirhoot to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 20th March, 1835.

No. 955. 1832 Reg. III

As a difference of opinion regarding the construction of Regulation III. 1832, has arisen, I shall feel obliged by your obtaining for me, in order finally to settle the point, the opinion of the Court, whether that regulation prohibits the transfer for money of slaves altogether, or only the mercantile traffic of them, and carrying them about the country for sale.

2. In Behar domestic slavery has always existed, and still does exist to a great degree, and slaves are constantly transferred from one portion of a family to another on a division, and also sold for money, and decrees have always been passed on such sales, but one of the principal sudder ameens considers that Regulation III. of 1832, annuls all sales since 1811, and that the present sale of them is illegal every where.

3. It appears to me, that the Regulation was only meant to prevent the importation and open traffic in slaves, and therefore will not bear the above construction, although I shall be very glad to hear that it does. There is no regulation prohibiting slavery, and it exists I believe in most parts of our provinces. They are generally bought in years of famine by the wealthy, and their progeny for every generation thenceforward are also slaves. There is no severity in fact in it, for they are generally the favored servants in the family, but still they are slaves, and have not the power of freeing themselves even if they wish it.

4. If the construction given be correct, numbers in this district might release themselves, if so inclined, as many transfers must have occurred since 1811, and I think the point should be decided for the guidance of the courts.

5. As slavery is abolished elsewhere, some regulation might safely be passed on the subject in this country for the prevention of it hereafter. A man may be allowed to let himself out as a slave for his life, (which is sometimes done here,) but he has no right to entail slavery on his posterity: and I do not foresee any danger or difficulty in forbidding hereafter every kind of transfer (except voluntary) among those now slaves, and declaring all children free-born after a fixed date.

To the Judge of Zillah Tirhoot, dated 29th May, 1835.

In continuation of my letter of the 3d April, No. 1022, I am directed by the Court to inform you that Regulation III. of 1832, does not prohibit the transfer of slaves for money; it merely prohibits the removal of them for the purpose of traffic from one territory, British and foreign, to any other territory dependant on this presidency consequently those slaves only are entitled, under its provisions, to their liberty, who have been so removed subsequently to the enactment of Regulation X. of 1811.

The Western Court, on the 15th June, 1835, concurred in this construction.

May 29th, 1835.

From the Officiating Judge of Meerut to the Register of the Sudder Dewanny Adawlut for the Western Provinces, dated 4th June, 1835.

No. 956.

1793
Reg. III Sec. 8.
1803
Reg. II. Sec. 5.
Munguth Rae, plff.
versus
Peerbuksh, deft.

I have the honor to submit, for the consideration and orders of the Sudder Dewanny Adawlut, the following papers in the case noted in the margin.

Persian proceeding of this court, dated 26th May, 1835.

Decree of the moonsiff of Kuthere, dated 30th April, 1834.

Decree of the judge of Alligurh, dated 28th November, 1834.

Decision of her Highness the Begum Sumroe, dated 29th April, 1835.

Petition of Munguth Rae, plaintiff, praying for review of judgment.

2. In this case the moonsiff's order was reversed by the judge of Alligurh on the ground of the defendant being an inhabitant of the illaca of her Highness the Begum Sumroe, out of the jurisdiction of Rubboopoora; but it appears that the defendant, having real property in the jurisdiction of the moonsiff's court of Rubboopoora, is amenable to it: the sanction of the Court is therefore requested to the reversal of the order passed by the judge of Alligurh, in order that the case may be re-heard in the civil court of Meerut, to which the pergunnahs of Rubboopoora have been transferred.

To the Officiating Judge of Zillah Meerut, dated 12th June, 1835.

I am directed by the Court to acknowledge the receipt of your letter of the 4th instant, with its enclosures.

2. In reply, I am directed to inform you that the circumstances mentioned by you do not form a sufficient ground for review of the former judge's order. It appears from your letter, that the defendant had real property in the jurisdiction of the moonsiff; this would no doubt render him amenable to it in cases connected with that property; such however is not stated to be the case in the suit to which your communication refers, in which it appears that the parties are both inhabitants of a foreign territory, and that the cause of action also arose in a foreign territory: the case therefore does not come within the limits of jurisdiction laid down in Section 5, Regulation II. 1803.

The Presidency Court, on the 10th July, 1835, concurred in this construction.

June 12th, 1835.

From the Officiating Judge of Zillah Meerut to the Register of the Sudder Dewanny Adawlut for the Western Provinces, dated 30th May, 1835.

No. 957.

1829
Reg X Schedule B, Article 8.

Bhugwunt Rae and Thakoordas, plaintiffs,
versus
Ringunath Sing, defendant.
Claim for redemption of a mortgaged dwelling house valued at 1050 rupees.

The case noted in the margin is a suit which was instituted before the principal sudder ameen for the redemption of a dwelling house mortgaged to the defendant for 498 rupees, and valued by the plaintiffs at 1050 rupees, but which, subsequently to the completion of the pleadings, on proof of the stated value or selling price of the aforesaid dwelling house being upwards of 5000 rupees, was returned by the principal sudder ameen as beyond his

competency to adjudge. I request the opinion of the Court as to whether in a suit for redemption of mortgage, the institution fee should be computed upon the amount advanced by the mortgager, or the full value of the property mortgaged, there being in the present instance, a difference of 4,500 rupees between the two, and this description of suit not coming exactly under any of the heads of directions for the valuation of claims, specified in Schedule B, Clause 2, Regulation X. of 1829.

To the Officiating Judge of Zillah Meerut, dated 17th June, 1835

I am directed by the Court to acknowledge the receipt of your letter of the 30th ultimo.

2. In reply, I am directed to inform you that in suits brought by a mortgager to regain possession of property mortgaged, the amount of stamp should be calculated on the value of the property, due regard being had to the rules laid down in the Regulation for estimating that value, and not on the sum for which the property was mortgaged. This appears distinctly to be the intent of Article 6, Schedule B. Regulation X. 1829, under which the stamp is regulated by the value of the thing claimed.

The Presidency Court, on the 7th August, 1835, concurred in this construction.

June 17th, 1835.

From the Officiating Judge of Zillah Bundlecund to the Register of the Sudder Dewanny Adawlut for the Western Provinces, dated 6th June, 1835.

No. 958.

Responsibility of persons taking charge of property under attachment.

I am desirous of obtaining the opinion of the Court as to the legality of a practice which I understand prevailed for many years in this court, but which is unauthorized by any enactment or circular order that I am at present aware of.

2. In attaching property in execution of a decree, it is the constant usage to make over the articles to the charge of some individual resident in the village where the property is situated—the chaprassee, by whom the attachment is made, taking an acknowledgment to that effect from the person in whose charge the property is thus left.

3. In the event of the property not being forthcoming at the time fixed for its sale, it seems to be understood that the amanutdar (as he is termed,) is liable to be imprisoned until he produces the property or makes good its value. An application of this nature was made to me a few days since by the principal sudder ameen; but as the practice was new to me, I requested that officer to quote his authority for the proceeding. In reply, he referred to Sections 10 and 18, Regulation XXVIII. of 1803, and to the constant practice of the court as authorized by my predecessors.

4. It does not appear to be that either of the Sections referred to by the principal sudder ameen can bear the interpretation put upon them by him. It is apparently intended by Section 10, that the distrainer is at liberty to leave the goods on the premises in charge of any person whom he may employ for that purpose. In the event of any person removing the property thus left under attachment, he would, I admit, be amenable to the penalties prescribed by Section 18, but it was, I imagine, never

contemplated by the legislature that a distrainer should be at liberty to leave the property in charge of any person whom he or the chaprassee might choose to indicate, who might be, and usually is, unconnected with the distrainer and the case in court, who is to receive no remuneration for the duty thus imposed on him, and who is moreover subjected to a weighty responsibility whether he will or no.

5. Guided by these considerations I declined to pass the order for the incarceration of the amanutdars. But it is represented to me by the sudder ameen that, as there is a great quantity of attached property, in cases which have been pending for years past, in a similar predicament, he apprehends that the persons in whose charge it is may, in consequence of the order passed in this particular case, consider themselves relieved from all responsibility, and either cause all the property to be conveyed away by the owners, or embezzle it themselves.

6. It appears to me from Section 13, Regulation XXVIII. of 1803, that the distrainer is the person who should take charge of the property, and if such a practice were to obtain, I think it likely that distrainers would be more cautious in availing themselves of the powers vested in them by the Regulations. So long as they are enabled to shift the responsibility and expense of guarding the property from themselves to others, it is obvious that they will be disposed to attach property without discrimination, and be less interested in bringing it to a speedy sale.

To the Officiating Judge of Zillah Banda, dated 19th June, 1835.

I am directed by the Court to acknowledge the receipt of your letter of the 6th instant.

2. In reply, I am directed to inform you that no person can be compelled against his will to take charge of property distrained or attached in the manner described in your communication; if however any one should take charge of the property voluntarily, he will of course become responsible for the faithful discharge of his engagement and liable to prosecution before the civil court by a regular suit for damages which may have arisen from his failing to do so; no summary proceedings however can be instituted against him.

3. Generally the person at whose instance the property is distrained or attached must be considered answerable for the safe custody of the property during the period of distraint or attachment.

The Presidency Court, on the 17th July, 1835, concurred in this construction.

June 19th, 1835.

To the Session Judge of Zillah Dacca, dated 19th June, 1835.

No. 959.

Power of a session judge to fine, unrestricted, except in certain instances.

I am directed by the Court to acknowledge the receipt of your letter of the 1st instant, No. 176: and, in reply to the question contained in the 2d paragraph, to inform

19th June, 1835.
26

you that the power of a session judge to fine is considered by the Court to be unrestricted as to amount, except when it is defined by any specific regulation (as in the case of Dhurna by Regulation VII. of 1829.)

June 19th, 1835.

Extract of a letter from the Judge of the City of Moorshedabad to the Register of the Presidency Court of Sudder Dewanny Adawlut, under date the 4th June, 1835.

No. 960.

A civil judge is not required to authenticate an English power of attorney

Para. 1. I wish you to do me the favour of ascertaining from the judges, whether a civil judge is at liberty to authenticate an English power of attorney sent by a lawyer of the Supreme Court, to be executed by a native resident of the judge's district, and with a view to constituting a native of Calcutta his attorney, in some matter pending or to be so before the Supreme Court.

To the Judge of City Moorshedabad, dated 19th June, 1835.

I am directed to acknowledge the receipt of your letter of the 4th instant, requesting to be informed whether a civil judge is at liberty to authenticate an English power of attorney, and in reply to inform you that no regulation positively requires a judge to attest such documents; and that if it is likely that the attestation of it will entail the necessity of attendance on the Supreme Court to verify your signature, and thus cause interruption to the discharge of your regular duty, they are of opinion that you should decline doing so.

June 19th, 1835.

From the Register of the Western Provinces to the Register of the Sudder Dewanny Adawlut, Calcutta, dated 20th June, 1835.

No. 961.

Rule regarding the filing of exhibits with petitions of appeal presented to the Sudder Dewanny Adawlut.

It appears to have been the practice of the vakeels of this Court lately, in filing their petitions of appeal, to file with them not only the copy of the decree appealed against and their vakalutnameh, but also copies of exhibits and other evidence amounting often to a considerable number of papers.

2. The Court are of opinion that no papers should accompany the petition of appeal except the copy of the decree (and the vakalutnameh,) and that if the appellant be desirous of filing others they should be given in with a separate petition on the usual stamp. Before adopting this rule however, they are desirous of learning the practice of the Calcutta Court on this point.

To the Register of the Sudder Dewanny Adawlut for the Agra Presidency, dated 7th August, 1835.

I am directed by the Court to acknowledge the receipt of your letter of the 26th June last, No. 83.

2. In reply, I am directed to observe that it has been the practice of this Court to allow the appellant to file, with his petition of appeal, the mokhtearnameh under which

the vakalutnameh may be executed, and the security bonds for costs or staying or enforcing execution, as well as the vakalutnameh and copy of the decree appealed against; and that all other documents are given in with a separate petition on the usual stamp.

3. In applications for special appeals no exhibit fee is required with the documents filed (according to a general roobukaree dated the 13th January, 1830, copy of which is annexed,) until the special appeal be admitted, when the fee is levied on such documents as are put on record in the proceedings.

To the Officiating Judge of Furruckabad, dated 26th June, 1835.

No. 962.
1812.
Reg V. Sec 14

I am directed by the Court to acknowledge the receipt of your letter of the 13th instant.

2. In reply, I am directed to state that the prohibition contained in the regulation against the sale of implements of agriculture relates merely to sales for arrears of rent or revenue; the moonsiff therefore was competent to sell such property in execution of a decree against which no such prohibition exists.

The Presidency Court, on the 31st July, 1835, concurred in this construction.

June 26th, 1835.

From the Officiating Judge of Zillah 24-Perguunahs to the Register of the Presidency Court of Sudder Dewanny Adawlut, under date the 13th June, 1835.

Mr Joseph Donovan versus Revd Free Paul Gradoly

No. 963.
1806
Reg. II. Sec 4.

With reference to an order of the late officiating judge of this district relative to staying proceedings, until the receipt of further orders from the Court of Sudder Dewanny, expected upon an intended appeal of the defendant in the case noted in the margin, and to the non-receipt of instructions from the superior court; I have the honor to submit the accompanying Persian proceedings, requesting directions for my guidance, and submitting my opinion on the construction of Section 4, Regulation II. *of 1806, which has not been hitherto* adverted to in the case.

The section already quoted appears, from the wording of it ("if satisfied," "he may," &c.) to leave the demand of security entirely to the discretion of the judge presiding in the court in which the cause is pending, and to preclude the right of appeal from his order; and, from the circumstance of that right being specially provided for in cases falling under Section 11, of the same regulation, it may be inferred that it was the intention of the framers of the regulation to restrict it to the latter section.

Held by the Calcutta court, under date the 13th June, 1835, that the order of the late judge, Mr Moore, refusing to take security from the defendant in the case of Mr. Donovan versus the Reverend Fre Paul Gradoly, was opened to appeal to this court.

The Western Court, on the 31st July, 1835, concurred in this construction—Letter to the Officiating Judge of 24-Perguunahs, issued 18th September, 1835.

June 26th, 1835.

10 } July, 1835
17 }

Extract of a letter from the Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, in reply to the Judge of Furruckabad's letter of 20th June, dated 10th July, 1835.

No. 964.

1814
Reg XXIII Sec 45, Cl 7

Para. 2. The Court propose to inform the judge that the limit of imprisonment, laid down in Clause 7, Section 45, Regulation XXIII. 1814, is applicable only to debtors confined under a decree of court. As however it cannot be intended that persons confined by order of the civil court in default of payment of fines should remain in prison for life, the Court are of opinion that in such cases the judge is competent to use his discretion in releasing the prisoner, due regard being had to the circumstances under which the fine was imposed.

The Presidency Court, on the 31st July, 1835, concurred in this construction.

July 10th, 1835.

From the Officiating Judge of Zillah Bundelkund to the Register of the Western Provinces, dated 7th July, 1835.

No. 965.

1805
Reg II. Sec 3, Cl 4

I have the honor to refer the following question for the consideration of the Court: "Do the provisions of Clause 4, Section 3, Regulation II. of 1805 apply equally to real and personal property or only to the former; in other words can a suit on a deposit of money or other personal property be entertained after the lapse of twelve years from the cause of action?"

To the Officiating Judge of Zillah Bundelkund, dated 17th July, 1835.

I am directed by the Court to acknowledge the receipt of your letter of the 7th instant.

2. In reply, I am directed to inform you that as the terms of Clause 4, Section 3, Regulation II. 1805 quoted by you are general, including "land and other property," its provisions must be considered applicable as well as to suits on deposits of money or other personal property as to land.

The Presidency Court, on the 7th August, 1835, concurred in this construction.

July 17th, 1835.

To the Judge of Zillah Cuttack.

No 966.

1814.
Reg XXIII Secs. 40 and 42.

I am directed by the Court to forward to you the accompanying replies to the queries contained in your letter.

Question 1. One of the subordinate courts having in a decree imposed a fine on a plaintiff, for having instituted a litigious and vexatious suit, instead of damages, as enacted by Section 40, Regulation XXIII. 1814,

Answer 1. Section 40, Regulation XXIII. 1814, does not authorize the imposition of a fine for a litigious or vexatious suit, the decree should therefore be reversed, and the case sent back to the subordinate officer, with

is the amount of fine or damages in such cases to be paid to the defendant or carried to the credit of Government?

Question 2. In case a subordinate court in a decree should adjudge damages against a plaintiff under the provisions of the Section above alluded to, must the circumstances of the case be reported to the judge, as prescribed in Section 42 of the same enactment? or may the court adjudging the damages proceed to realize the same in execution of the decree, leaving the person dissatisfied with the decision to appeal from it in the regular mode?

instructions to proceed in the manner laid down in the Section cited. Fines are leviable only on account of Government. If damages are awarded, they belong to the party declared by the decree to be entitled to them.

Answer 2. In such case the damages form part of the decree, and unless the party dissatisfied with it appeal, the decree will be executed, without reference to the judge, in the same manner as other decrees of court.

The Western Court, on the 28th August, 1835, *concurred in this construction.—Letter to Judge of Cuttack, issued* 11*th September,* 1835.

July 17*th,* 1835.

To the Judge of Zillah Jessore, dated 17*th July,* 1835.

No. 967.

Suits got forward either by or against a European British subject in his capacity of manager of an estate, not being personal, to be tried in the Company's courts the same as suits on the part of or against a native.*

I am directed by the Court to acknowledge the receipt of your letter of the 1st instant, requesting to be informed whether suits connected with the realization of rent instituted by the tuhseeldars and ryots of estates under charge of Mr. E. Macnaghten, receiver of the Supreme Court, are cognizable by the moonsiffs.

2. In reply, I am directed to inform you that it has been ruled by Government, (on a reference in consequence of a difference of opinion between this Court and the Sudder Dewanny Adawlut for the Agra Presidency,) that the appointment of a European British subject to the management of a native minor's estate cannot be considered to confer on such native the rights and privileges of a European British subject, which only attach to the manager personally; and that suits brought forward either by or against such European British subject in his capacity of manager, not being personal, should be regarded as suits instituted on the part of or against a native, and ought to be tried, like every other suit in which the natives are parties, in the court by which from its amount it may be cognizable.

July 17*th,* 1835.

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* By Act No. XI. of 1836, European British subjects are made generally amenable to the native courts the same as natives.

From the Judge of Zillah Juanpore to the Register of the Western Provinces, dated 23d July, 1835.

No. 968.

The civil courts competent to issue precepts to collectors directing them to carry their orders into effect within a fixed period.

I request that you will be pleased to obtain for me the opinion of the Court whether there would be any objection to the zillah court issuing precepts to the collectors, directing them to carry their orders into effect within a period fixed by the court, or to assign reasons for the order not being completed at the period prescribed by the court. By having a register of the precepts and period when the return should be made, the court would always be made acquainted with any inattention that might occur, and prevent in many cases the delay in execution of decrees, which otherwise cannot be avoided.

To the Judge of Zillah Juanpore, dated 31st July, 1835.

I am directed by the Court to acknowledge the receipt of your letter No. 158, under date the 23d instant, and in reply to acquaint you that they are not aware of any objection to the measure which you have suggested, of requiring the collector to carry into effect the orders of your court, and to return the precept, issued, therewith, duly executed within a certain period, or to shew good and sufficient cause for the delay.

The Presidency Court, on the 21st August, 1835, concurred in this construction.

July 31st, 1835.

From the Judge of City Moorshedabad to the Register of the Presidency Court of Sudder Dewanny Adawlut, under date the 8th July, 1835.

No. 969.

1793. Reg III Sec. 8. 1813. Reg. II. Sec 5.

I have the honor to request the favor of your obtaining for me the opinion of the judges on the following point.

2. A suit has been instituted in this court, having reference to the farm of sixty-three villages, sixty-one of which are situated in the Beerbhoom zillah, and only two belong to Moorshedabad. It happens however, that although, as regards the foujdarry, the sixty-one villages in question are under the magistrate of Beerbhoom, yet the revenue of the whole of them is paid (under, I presume, a special authority) into the collectorate of Moorshedabad, and it is owing to the latter circumstance that the suit has been admitted into the court of this city.

3. As the propriety of hearing the suit in question here, merely because the revenue of all the villages (which are within the limits of another district) happens to be paid into this treasury, seems questionable, considering the tenor of Regulation III. of 1793, especially of Section 8, I wish to ascertain how, in the judgment of the superior Court, I ought to proceed.

To the Judge of City Moorshedabad, dated 31st July, 1835.

In reply to your letter of the 8th instant I am directed by the Court to inform you that, under the presumption that the greater part of the villages which form the cause of

action of the suit therein alluded to are situated within the jurisdiction of the civil court of Beerbhoom, they deem it proper that the suit should be tried in that court, and request that you will transfer it for that purpose with a copy of this letter to the judge of Beerbhoom.

July 31*st*, 1835.

No. 970.

1828.
Reg. X. Sec. 8. & Schedule A

I am directed by the Court to forward their reply to the question contained in your's of the 29th of the preceding month.

Question. An account of a party is made up, and the balance struck and stated, according to established usage, at the foot of the sheet in the byekhata or banker's book of account · a third party renders himself responsible for the eventual adjustment of such balance, by affixing his name in the capacity (to all intents and purposes) of security for the debtor's discharge of the creditor's claim. Will the guarantee as above described, of the third party, be vitiated by the fact of the said security, &c. being on unstamped paper?

Answer. To make the security available to the claimant, the leaf in the account book on which it is written must be stamped (as it still may be under Section 14, Regulation X. 1829.) At the same time, in the event of that course not being adopted, it rests with the claimant, in order to derive benefit from the security, to adduce other sufficient evidence of its having been given, independently of the paper exhibiting it, which in its present state cannot be legally received in proof of the fact.

The Western Court, on the 4*th September*, 1835, *concurred in this construction.—Letter to the Judge of Moorshedabad, issued* 18*th September*, 1835.

August 7*th*, 1835.

From the Officiating Session Judge of Zillah Bundlekhund to the Register of the Western Provinces, dated 30*th July*, 1835.

No. 971.

In the event of a prisoner committed for trial on two counts being convicted on only one count by the session judge, and only on the other by the law officers, the session judge is incompetent to pass sentence, but must refer the trial to the Nizamut Adawlut.

I have to request you will obtain for me the opinion of the Sudder Nizamut Adawlut on the following point:

2. Supposing a prisoner to be committed on two counts, on both of which if convicted, the maximum of punishment which the session judge is authorized to inflict, is the same; as for instance "affray" and "culpable homicide," or "theft" and "knowingly receiving stolen property," and there being a difference of opinion between the session judge and the law officer, the one deeming the prisoner convicted on the first count and the latter on the second, or vice versa; is it necessary for the judge to refer the case to the Sudder Nizamut Adawlut, or may he proceed to pass sentence agreeably to the Regulations?

To the Officaiting Session Judge of Bundlekhund, dated 7th August, 1835.

I am directed to acknowledge the receipt of your letter under date the 30th ultimo, and in reply to communicate to you the opinion of the Court that, in either of the cases put by you, a session judge would not be competent to pass sentence, but must necessarily refer the trial for the orders of the Nizamut Adawlut.

The Presidency Court, on the 28th August, 1835, *concurred in this construction.*

August 7th, 1835.

From the Officiating Session Judge of Zillah Goruckpore to the Register of the Western Provinces, dated 28th July, 1835.

No. 972.

1828 Reg. VIII Sec. 3
1834 Reg. II. Sec. 3.

I beg you will do me the favor to submit, for the opinion of the Court of Nizamut Adawlut, the following question of construction:

2. Are the powers vested in magistrates by Section 3, Regulation VIII. of 1828, to sentence offenders in cases of affray, to imprisonment *with labor*, (subject of course to the provisions of Section 3, Regulation II. of 1834,) strictly limited to one year, or are those functionaries competent to adjudge the penalty of labor for a further period of one year, in default of payment of the fine which that enactment authorizes to be imposed on the offending party in addition to imprisonment?

To the Officiating Session Judge of Zillah Goruckpore, dated 7th August, 1835.

I am directed by the Court to acknowledge the receipt of your letter under date the 28th ultimo, and in reply to communicate to you the opinion of the Court that the power vested in a magistrate by Section 3, Regulation VIII. of 1828, of awarding labor to a prisoner convicted of affray unattended with aggravating circumstances, during the original term of imprisonment to which he may be sentenced, must be considered to extend equally to the further period of imprisonment he may be required to undergo in default of paying the fine which, under the provisions of the foregoing enactment, the magistrate may see fit to impose on him; subject, of course, as regards both periods, to the rule laid down in Clause 2, Section 2, Regulation II. of 1834.

The Presidency Court, on the 4th September, 1835, *concurred in this construction.*

August 7th, 1835.

From the Commissioner of Circuit for the 3rd Division to the Register of the Western Provinces, dated 24th July, 1835.

No. 973.

1810. Reg. IX Sec. 39.
1825 Reg IX. Sec. 9.

I have the honor to submit, for the orders of the Court, the documents noted in the margin.

1. Letter in original from the Session Judge of Zillah Bareilly, dated 21st July enclosing—

2. Letters from the officiating joint magistrate of Shahjehanpore, dated 18th July, which covered

3. An original letter addressed to the register of the Nizamut Adawlut dated 18th July, referring a question for the decision of the Court.

2. The question submitted by the joint magistrate for the opinion of the Court appears to be, whether the taking of "choongee" by zumeendars, within the precincts of whose estates markets are held, is illegal or otherwise.

3. The Regulation alluded to by the joint magistrate, viz. XXXVIII. of 1803, is rescinded by Regulation IX. of 1804, which again is rescinded by Section 2, Regulation IX. of 1810.

4. Sections 3, 37, 38 and 39 of the latter Regulation appear to be the only clauses which bear on the question, which I conclude should be taken into consideration in connection with Section 9 of Regulation IX. of 1835.

5. The missil of the case which has given rise to the reference is with the records of the late fifth division at Bareilly: should the Court deem it requisite to have it before them with a view to apply to Government for a reversal of Mr. Commissioner Campbell's orders of the 24th October, 1834, or otherwise, it can be sent for and submitted. I have not however deemed it proper to defer the reference requested by the joint magistrate on this account.

6. In conclusion I have the honor to request the Court will decide if references of a nature similar to the present should in future be made by the session judge, under the orders of Government of the 16th ultimo, or by the commissioner.

From the Officiating Joint Magistrate of Shahjehanpore to the Register of the Western Provinces, dated 18th July, 1835.

I have the honor to request the favor of your submitting the following case for the orders of the Sudder Nizamut Adawlut. Mr. Robinson, on a plaint being filed by Houlasee Heeraloll, plaintiff, *versus* Usmutoollah Khan, directed the cotwal of Shahjehanpore, in a roobukaree under date 12th August, 1834, to station a police officer in mouzah Mhaow on bazar days, for the purpose of preventing the zumeendar or any other individual from collecting "choongee." The zumeendar appealed the case to the commissioner, who, in a Persian proceeding dated 24th October, 1834, reversed the magistrate's order, remarking that such a custom had obtained among the landholders from time immemorial, and that Regulation XXXVIII. of 1803, as quoted by the plaintiffs to prove the illegality of the practice, was not applicable to the case in point, but referred to unauthorized collections connected with the permit or custom-house. The commissioner, however, made a reserve in favor of parties trading in grain or other merchandize, passing through the above village without exposing the same for sale, whom he considered as entitled to be exempted from this tax.

2. On the 10th February, 1835, twenty-seven bunias and traders again petitioned against this exaction; and, from the state of excitement that prevailed, it was deemed necessary to depute a police man to the village to keep the peace.

5. There cannot exist a doubt, I think, regarding the impolicy and inconvenience of continuing a custom so essentially liable to be abused, and so vexatious to the petty trading classes of the villages; but the late commissioner of Bareilly having viewed the case in a different light and upheld the usage as a legal and acknowledged right of the zumeendars, I trust the Court will excuse my requesting that some explicit orders may be issued on the subject.

To the Commissioner of Circuit for the Third Division, dated 7th August, 1835.

In continuation of my letter to your address under date the 7th ultimo, and in reply to the question submitted in paragraph 2 of your communication of the 24th of the preceding month, regarding the power of a zemindar to levy "choongee" in markets held within the precincts of his estate, I am directed to communicate to you the opinion of the Court that the provisions of Section 39, Regulation IX. of 1810, cited by yourself and the officiating joint magistrate, which is a penal enactment, are not applicable to collections of the above nature, which appear to be sanctioned by established custom, and would, therefore, rather fall within the rule contained in Section 9, Regulation IX. of 1825, provided of course that no oppression or act of violence be committed such as to render the case cognizable by the magistrate as a misdemeanor under the general regulations in force.

The Presidency Court, on the 25th September, 1835, *concurred in this construction.*

August 7th, 1835.

No. 974.
1806
Reg. XVII. Sec 7.

The Calcutta Court held on a reference from the judge of Cuttack that if a mortgager or his representative, desirous of redeeming the mortgaged property in the possession of the mortgagee, deposits the sum due to the mortgagee either with or without interest (as the case may be) in court, under the provisions of Section 2, Regulation I. of 1798, and Section 7, Regulation XVII. 1806, the period of the notice to be served on the mortgagee, requiring him to render up possession of the property, need not be a year, but any reasonable period according to the distance of his residence from the sudder station.

August 7th, 1835.

From the Judge of Zillah Mymensingh to the Register of the Presidency Court of Sudder Dewanny Adawlut, under date the 20th July, 1835.

No. 975.

A session judge is competent to try a prisoner committed by his own order in his capacity of civil judge, for any criminal act not being forgery or perjury.

A case is now under investigation before me, in which the sherishtadar of the late moonsiff of Serajgunge (deceased) is accused of making away with two plaints presented to the moonsiff, and with other acts of assumption of authority and direct interference in suits pending in the moonsiff's court. If the first offence is proved, some notice for the sake of example would be necessary, and I am therefore desirous of knowing whether the offence "abstracting a record of a civil court" is of that criminal character that I

might direct the magistrate to commit the defendant, and again, if committed, should I be competent to take up the trial as session judge, or would it be necessary to send the case to the commissioner?

The Court's late opinion in cases of perjury makes me doubtful on this last point, and to prevent a wrong direction on my part to the magistrate, I am desirous in this stage of the proceedings to be furnished with the superior Court's instructions for my future guidance.

To the Judge of Zillah Mymensingh, dated 7th August, 1835.

In reply to your letter of the 20th ultimo, I am directed to inform you that if, from the *prima facie* evidence before you, you think that there are grounds for bringing the sheristadar of the late moonsiff of Seraujegunge to trial for any criminal act, not being forgery or perjury, or other act for which the civil judges are themselves expressly enjoined to commit for trial, you should make over the case to the magistrate, leaving him to commit the prisoner, or otherwise dispose of the case, as he may think proper. In the event of his committing the prisoner, you are competent to try him as session judge.

August 7th, 1835.

From the Officiating Register of the Western Provinces to the Register of the Presidency Court, dated 7th August, 1835.

No. 976.

A zillah judge confirming the decree of a lower court is not competent to adjudge interest on the sum decreed at a less rate than 1 per cent.

A question having arisen whether a zillah judge, confirming the decree of a lower court, is competent to adjudge interest on the sum decreed at a less rate than 1 per cent. per mensem, I am directed to request you will submit the point for the consideration and opinion of the Calcutta Court.

By Section 35, Regulation IV. of 1803, the Provincial Courts were required to adjudge the full rate of interest in such cases; and referring to the object of the rule, viz. the prevention of litigious appeals, and to the situation in which the zillah courts are placed by the abolition of the Provincial Courts, it appears to the Court that the principle of the rule, the terms of which are imperative, must be considered equally applicable to the zillah judges, and, should the Calcutta Court concur in this opinion, they propose to adopt it as a rule of future practice.

August 7th, 1835.

To the Register of the Western Provinces, dated 18th September, 1835.

I am directed by the Court to acknowledge the receipt of your letter of the 7th ultimo, No. 56, and in reply to inform you that they concur in the construction contained in the 2d paragraph, the principle of which they also extend to principal sudder ameens.

From the Officiating Judge of Zillah Nuddea to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 7th August, 1835.

No. 977.

1810. Reg. XIII Sec 11.

1829 Reg X Schedule B, Article 10

I have the honor to request that you will obtain for me the opinion of the Court of Sudder Dewanny Adawlut on the following point, viz whether the provisions of Section 11,

Regulation XIII. 1810, relative to the refund of the institution fee in cases adjusted by razeenameh, are to be considered as applicable to cases of dustburdaree, in which a plaintiff voluntarily relinquishes the prosecution of his claim.

To the Judge of Nuddea, dated 28th August, 1835.

I am directed by the Court to acknowledge the receipt of your letter of the 7th instant, and in reply to inform you, that the refund of the stamp duty in lieu of the institution fee can only be sanctioned in cases in which a razeenameh has been regularly filed.

August 28th, 1835.

To the Commissioner of Circuit for the 4th Division, dated 11th September, 1835.

No. 978.

The illegitimate son of a European British subject by a native mother can be tried by the local courts on a charge of adultery

A married woman, the legitimate child of a British father, is not amenable to the local courts on a similar charge preferred against her by her husband.

I am directed by the Court to acknowledge the receipt of your letter under date the 15th ultimo, No. 88, with its enclosures, from the acting magistrate of Allahabad.

2. In reply to the first question submitted by the acting magistrate I am directed to acquaint you, for his information and guidance, that the illegitimate son of a European British subject by a native mother can be tried by the local criminal courts on a charge of adultery.

3. With respect to the second point referred by the acting magistrate, I am directed to communicate to you the opinion of the Court, that under the existing regulations a married woman, the legitimate child of a British father, is not amenable to the local courts on a similar charge preferred against her by her husband.

The Presidency Court, on the 9th October, 1835, concurred in this construction.

September 11th, 1835.

To the Judge of Zillah Rajeshahye.

No. 979.

1814
Reg XXIII Sec 45, Cl 6.
1831.
Reg. V Sec. 22.
1832.
Reg. VII Sec. 7

The question put by you to the Court appears, on consideration of your letters of the 2d June, and that under acknowledgment, to be as follows:

2. As Clause 6, Section 45, Regulation XXIII. of 1814, (which empowers a judge to admit an appeal from the decision of a moonsiff, notwithstanding the prescribed period of appeal have elapsed, should it appear that such decree was obtained in an irregular manner, or some sufficient grounds be shewn for staying its execution,) has not been especially repealed by Regulations V. of 1831 and VII. of 1832, can the judge now admit the appeal, though the prescribed period have elapsed?

3. The Court observe that the provisions of Clause 6, Section 45, Regulation XXIII. of 1814, were considered necessary to check irregularities, in the decisions of the moonsiffs of the old system, but are inapplicable to those appointed under Regulation V. 1831, who are considered to be persons of superior respectability and qualifications, and have on that ground been vested with higher powers. Their decisions have been placed by the general rules contained in Section 22 of that Regulation and Section 7, Regulation VII. 1832, on the same footing as those of other courts, consequently in the opinion of the

Court no appeal is admissible from them, notwithstanding any irregularity or error, after the lapse of the prescribed period, unless good and sufficient cause be shewn for the delay which may have occurred in excess of that period.

The Western Court, on the 2d October, 1835, concurred in this construction.—The letter to the Judge issued 23d October, 1835.

September 11th, 1835.

From the Additional Judge of Zillah Ghazeepore to the Register of the Court of Sudder Dewanny Adawlut for the Western Provinces, dated 10th September, 1835.

No. 980, 1795 Reg. XXII Sec. 35, Cl. 2, 3, 5.

Several cases regarding the claims of putteedars to obtain separate possession of their shares being now before me, I find it necessary to refer the following question for the opinion of the Court. There seems to be a difference of opinion on the subject among former judges, and the regulation does not appear to me very distinct.

2. Under the provisions of Clauses 2 and 3, Section 35, Regulation XXII. 1795, the possession of any one putteedar within twelve years entitles the whole of the sharers to restoration, and by Clause 5 of the same Section it is further enacted that such putteedars shall be entitled to restoration on any one putteedar regaining possession, although they have not held possession within twelve years. The doubt which has arisen is whether, after one putteedar has regained possession, there is any limit whatever in point of time with regard to the other sharers bringing forward their claim. The point may be more plainly stated thus; A obtained a decree of court in 1820 for possession as zemindar, his putteedars B and C are in consequence entitled to possession of their shares; but must these claims be brought forward immediately or at any time before 1832, or is there no limitation whatever?

To the Additional Judge of Zillah Ghazeepore, dated 18th September, 1835.

I am directed to acknowledge the receipt of your letter under date the 10th instant, requesting the opinion of the Court as to whether, with reference to the provisions of Clauses 2, 3 and 5, Section 35, Regulation XXII. of 1795, after one putteedar has regained possession of his puttee, there is any limit whatever in point of time with regard to the other sharers bringing forward their claim.

2. In reply, I am directed to communicate to you the opinion of the Court that in cases of the nature of those described in the enactment above cited, the putteedars or "other sharers" alluded to therein must prefer their claims within the period of twelve years from the date on which the proprietory right was adjudged by a decree of court to the zemindar or one or more of their co-parceners, and that in default of so doing their claims would fall under the operation of the general rule of limitations.

September 18th, 1835.

To the Register of the Western Provinces, dated 23d October, 1835.

I am directed by the Presidency Court to acknowledge the receipt of your letter of the 18th ultimo, No. 31, enclosing copies of a letter from the additional judge of Ghazeepore under date the 10th ultimo, and of a reply to the same which the Western Court propose to transmit with the concurrence of this Court.

2. In reply, I am directed to state that Mr. Rattray and Mr. Shakespear concur without reservation in the construction which the Western Court propose to adopt in their answer to the additional judge. The other judges of the Court also concur, provided that for upwards of twelve years after the proprietory right was adjudged to one of the putteedars, the other sharers did not hold any lands pertaining to the estate in lieu of receiving a specific share of the profits.

To the Officiating Judge of Zillah Chittagong, dated 16th September, 1835.

No. 981.
1819
Reg II Sec 10

I am directed by the Court to observe that in the cases alluded to by you, there are generally two points at issue—1st, the proprietory right, or right of ownership, and 2ndly, the nature of the tenure under which the lands are held. In all cases, in which the right of ownership is alone the point at issue, (as for instance, when the heirs of a holder of rent-free lands sue their co-parceners for their respective shares,) the case appertains solely to the civil court; on the other hand, if the nature of the tenure as well as the proprietory right is disputed, viz. if a zumeendar claims possession of any land as attached to his estate, and the defendant pleads that he holds possession thereof as rent-free, or *vice versa*, the case must, in the judgment of the Court, be referred to the collector for report.

2. With reference to the 10th paragraph of your letter, I am directed to request, in the event of the collector returning any reference made by you, with an opinion that the case is not one on which he is bound to report, that you will, in the event of your entertaining a different opinion, repeat the order, under the usual precept, requiring a return to be made within a given period. Should the collector still refuse to investigate the case, you will then report the circumstances in English for the information of this Court, in order that such further measures may be adopted as may appear to be necessary and proper.

3. These instructions will of course supersede the mode of proceeding by appeal to the commissioner laid down in the Construction Book, page 224, No. 527.

The Western Court, on the 11th March, 1836, concurred in this construction.

September 16th, 1835.

Resolution of the Presidency Court of Sudder Dewanny Adawlut, under date the 16th Oct 1835.

No. 982.
1814
Reg XXVI Sec 4, Cl 3

It was resolved in concurrence with the Western Court that when, in a case decided by a single judge, the deciding judge shall have rejected an application for a review of the judgment, his rejection is to all intents and purposes final; unless he himself shall see grounds, on a subsequent application, to admit a review, and that it is not competent to

the Court (the said judge being absent and incapable of hearing a second petition within six months) to authorize a review of the order rejecting the review.

October 16th, 1835.

Extract of a Letter from the Commissioner of the 5th Division to the Officiating Register of the Sudder Dewanny Adawlut, Western Provinces, dated 2d October, 1835.

No. 983.
1799
Reg V Secs 2 3
1803
Reg. III Sec 16
Cl 2. 3
1806
Reg XV Sec 6.

I have the honor to request that you will obtain from the Court an opinion on the construction of Section 16, Regulation III. 1803, and Section 6, Regulation XV. 1806.

Question 1st.—Is the interference of the civil judge, by Section 16, Regulation III. 1803, and Section 6, Regulation XV. 1806, strictly limited to cases of persons dying intestate or not?

Question 2nd.—Though the will of the deceased be not forthcoming, or no will may exist, ought the civil judge to interfere if there be "a claimant," a near relation, or respectable friend on the spot, willing to take charge of and to be responsible for the property?

Question 3d.—If in the case last mentioned, the judge be considered bound to take charge of the property, may he not use some discretion, such as feeling and delicacy would naturally suggest, in delaying for a few days the necessary advertisement, thereby to give the friends of the deceased on the spot an opportunity of informing those at a distance of their loss, before the formal announcement is made publicly to the world?

To the Commissioner of Circuit for the 5th Division, dated 16th October, 1835.

I am directed by the Court to communicate to you their opinion as follows, on the several points of Section 16, Regulation III. of 1803, and Section 6, Regulation XV. of 1806, mentioned in your letter of the 2d of that month.

2. In reply to your first question I am directed to inform you that the interference of the civil court with respect to the estates of deceased British subjects, is not restricted by the Sections of the Regulations above quoted to the cases of persons dying intestate, but on the contrary Section 6, Regulation XV. of 1806 expressly requires, that on the demise of a British European subject within the limits of the jurisdiction of a zillah or city court, the judge shall take charge of the effects of the deceased, and on a will being discovered shall deliver them over to the person who may obtain probate thereof.

3. In answer to your second question I am directed to observe that in either of the cases which you have supposed, where the will of the deceased is not forthcoming, or where none may be in existence, notwithstanding that there may be a claimant, near relation, or respectable friend on the spot, willing to take charge of and to be responsible for the property, the Regulation before cited renders it obligatory on the civil court to interfere, as in the case described in the preceding paragraph, and to retain charge of the

estate until the registrar of the Supreme Court of Judicature, to whom the circumstance is immediately to be reported, or some other person, shall have obtained letters of administration from that Court, when the property is to be delivered over to the person to whom such letters may have been granted. The terms of the enactment being imperative and express as to the jurisdiction to be exercised by the zillah courts in such cases, the Court observe that no discretion whatever is left to the judge in the matter.

4. With reference to the third point noticed in your letter, the Court direct me to observe that the course to be pursued by the zillah and city judges in matters of this nature is clearly laid down in the Regulations, and they do not consider themselves competent to authorize any deviation therefrom.

The Presidency Court, on the 13th November, 1835, *concurred in this construction.*

October 16th, 1835.

From the Judge of Zillah Moradabad to the Officiating Register to the Sudder Dewanny Adawlut for the Western Provinces, dated 17th October, 1835.

No. 984. 1821. Reg I.

With reference to the accompanying copies of letters from the Secretary to the Government of Agra, I beg to be favored with the orders of the Court respecting the mode in which the trial of the cases alluded to, is to be conducted, whether in the form of judicial trials, or agreeably to the provisions of Regulation I. 1821, as regards the filing of exhibits, applications for the attendance of witnesses, permission to mokhtars, not authorized vakeels of the court, to plead, &c. &c.

2. Also, whether in the investigation of such cases the power devolving on the special commissioner, by Section 5 of the Regulation quoted, of amending or annulling altogether decrees previously passed in the judicial courts is to be exercised.

To the Judge of Zillah Moradabad, dated 30th October, 1835.

I am directed by the Court to acquaint you that in the trial of the cases, which have been made over to you under the orders of Government, from the commissioner of the division, you should be guided by the rules applicable to the investigation and decision of claims of that nature as laid down in Regulation I. of 1821, and the subsequent enactments on the same subject; and that with regard to such suits you must be considered to be vested with precisely the same powers and authority as were possessed and exercised by the officers of the special commission, acting under the provisions of the Regulation above cited, and subsequently, on the abolition of that office, by the commissioners of revenue and circuit, to whom the duties of the commission in question were transferred under the provisions of Clause 1, Section 10, Regulation I. of 1829.

The Presidency Court, on the 20th November, 1835, *concurred in this construction.*

October 30th, 1835.

From the Officiating Register of the Western Provinces to the Register of the Presidency Court of Nizamut Adawlut, under date the 30th October, 1835.

No. 985.

1799.

Reg. VIII. Sec. 3.

A Hindoo liable to punishment for aiding and abetting in the suicide of a leper.

I am directed to request you will submit, for the perusal of the Calcutta Court, the accompanying copy of a letter from the officiating session judge of Bundlekhund, under date the 21st instant, referring, for the orders of the Court, his proceedings on the trial noted in the margin.*

* Government versus Doorjun & others, charge, culpable homicide in burying alive a hunker, a leper

2. The object of the present reference is to ascertain the practice of the Calcutta Court in cases of this nature, and their opinion on the question raised by the officiating session judge as to the liability of a Hindoo to punishment for aiding and abetting in the suicide of a leper, the act being declared by the Shaster justifiable under certain circumstances, and having been so held by the Court in their resolution under date the 25th June, 1817.

3. A case more in point, the Court observe, that either of those alluded to by the officiating session judge, and to which he does not appear to have adverted, is to be found at page 127, volume III. of the Nizamut Reports, in which the persons concerned were of the same persuasion as those in the trial under consideration. The Court in that instance convicted the parties of the crime laid to their charge, and although under the peculiar circumstances of the case they did not deem it proper to visit the offence with any severer punishment than the imprisonment they had already undergone, their sentence clearly involved a departure from the principle of the resolution above alluded to, and they see no grounds for questioning the propriety of the conviction in that case, or for their pursuing a different course in the trial now before them, particularly as the practice of Suttee or of burning or burying alive the widows of Hindoos, which the barbarous and unnatural custom herein alluded to was considered to resemble in principle, has been declared by a legislative enactment illegal and punishable by the criminal courts. But as the resolution in question was adopted by the Court at large after a full discussion of the subject, and has never been formally set aside, it seems probable, as in the instance under consideration, that it is still looked upon by the lower courts as the rule of practice in cases of this nature, and that it influences their proceedings accordingly. Under these circumstances it has appeared to the Court that the present reference from Mr. Bagbie furnishes a suitable opportunity for a re-consideration of the whole question; and they propose, therefore, with the concurrence of the Calcutta Court, to consider the resolution of the 25th June, 1817, as superseded, and to be guided in future by the rule contained in Section 3, Regulation VIII. of 1799, which is still in force, and which expressly declares that "it "shall not justify any prisoner convicted of wilful homicide, that he or she was desired "by the party slain to put him or her to death."

The Presidency Court, on the 18th December, 1835, concurred in this construction.

October 30th, 1835.

From the Session Judge of Zillah Juanpore to the Officiating Register of the Nizamut Adawlut for the Western Provinces, dated 2d November, 1835.

No. 986.

A session judge is competent to direct the re-apprehension of a person charg d with a criminal offence, who may have been acquitted by the magistrate, and to sentence him to punishment, after hearing his defence.

It is the duty of a session judge to send for any case the order passed in which may appear to him on a revision of the monthly statements, to be of questionable propriety.

I request that you will obtain for me the opinion of the Court of Nizamut Adawlut on the following question:—An appeal is made to me from an order passed by the officiating magistrate of Juanpore in a case of assault, in which it appears from the evidence taken before that officer that the complainant and others were aggressors, and equally engaged with the prisoner punished by the magistrate, but in consequence of his party having received the worst of the assault, the acting magistrate releases the complainant's party. Am I authorized to sentence the complainant and his party to any punishment after their acquittal by the acting magistrate?

2. The monthly reports of criminal trials are now forwarded to the office of the session judges instead of that of the commissioner of circuit. I have therefore to request that you will ascertain from the Court of Nizamut Adawlut whether I may call for any trial without a petition of appeal, and revise the sentence. This power was invested in the commissioner of circuit, and should the session judge be unable to exercise it, I would suggest that the monthly statements be forwarded as heretofore to the commissioner.

To the Session Judge of Zillah Juanpore, dated 6th November, 1835.

I am directed by the Court to acknowledge the receipt of your letter, No. 89, under date the 2d instant.

2. In reply to the question submitted in the 1st paragraph of your letter, I am directed to inform you that, in your capacity of a court of appeal, you are competent to direct the re-apprehension of a person charged with the commission of a criminal offence, who may have been acquitted by the magistrate, and to sentence him to punishment, should such acquittal appear to you to have been improperly made; but the Court direct me to communicate to you their opinion that this power should be exercised with the utmost caution, and only on strong grounds being shewn for your interference; and that whenever you may see occasion to reverse the decision of a lower court in a case of this nature, previously to passing sentence of punishment on the accused, you should hear any defence which he may wish to make.

3. With respect to the particular case which has given rise to your present reference, the Court take it for granted that the persons concerned therein, whom you consider to have been improperly acquitted by the magistrate, have been regularly put on their trial.

4. In reply to your second question, the Court direct me to observe that, in all matters connected with the administration of criminal justice, you are vested with precisely the same powers and authority as were possessed and exercised by the commissioners of circuit, prior to the introduction of the provisions of Act VII. of 1835 into the district subject to your control, and that you are therefore not only competent, but that it is your duty to send for any case the order passed in which may appear to you, on a revision of

the magistrate's statements, of questionable propriety, although no appeal may have been preferred to you in the matter.

The Presidency Court, on the 4th December, 1835, concurred in this construction.

November 6th, 1835.

To the Deputy Secretary to the Government of Bengal in the Judicial Department, dated 13th November, 1835.

No. 987.

1819. Reg. II. Sec 30, Cl. 7. 1829. Reg. X Schedule D. Article 8.

I am directed by the Court to transmit to you the accompanying copies of correspondence as per margin,* and to request to be informed whether, in the opinion of Government, the rule contained in Clause 7, Section 30, Regulation II. 1819, which allows a petition of appeal from the decision of a collector to be written on stampt paper of one rupee value, is to be considered as repealed by the provisions of Regulation X. of 1829, which rescinds all the previous Regulations relative to the imposition, levying and collecting of stamp duties.

* Letter to the Register Sudder Dewanny Adawlut, Western Provinces, dated the 17th July, 1835.
Resolution of the Court, dated 10th July, 1835
Letter from the Officiating Register Sudder Dewanny Adawlut, Western Provinces, dated 7th August, 1835, No 87
Letter to ditto ditto, ditto 4th September, 1835.
Letter from ditto ditto, ditto 25th ditto, No 43

2. His Honor in Council will observe that the Court doubt whether, with reference to the peculiar nature of the suits affected thereby, the special indulgence granted to appellants under the rule in question can be held to be abrogated by the stamp regulation.

November 13th, 1835.

From the Secretary to the Government of Bengal to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 17th November, 1835.

I am directed to acknowledge the receipt of your letter dated the 13th instant, with its enclosures, and to inform you in reply, that in the judgment of the Honorable the Governor of Bengal, Section 2, Regulation X. of 1829 must be held, as ruled by the Sudder Court at Allahabad, to rescind Clause 7, Section 30, Regulation II. of 1819, in common with all other parts of the existing Regulations relating to the imposition, levying and collecting of stamp duties.

Extract from a Letter addressed, under date the 4th September, to the Register of the Western Provinces, in reply to his Letter of the 7th August, 1835.

Para. 2. I am directed to request information as to whether the principle laid down in the third paragraph of that letter, is considered by the judges of the Allahabad Court to be applicable to the first petition of appeal from the collector's decision under Clause 7, Section 30, Regulation II. of 1819, as well as to the petition of special appeal and to the pleadings, exhibits, &c. in both appeals; as the Court are disposed to doubt

whether, with reference to the peculiar character of such suits, the special indulgence granted to appellants under that rule can be held to be abrogated by the stamp regulation.

From the Register of the Western Provinces to the Register of the Presidency Court, dated 25th September, 1835.

I am directed by the Court to acknowledge the receipt of your letter, No. 2196, under date the 4th instant, regarding the value of stamp duty to be used for petitions of regular and special appeal in suits under Regulation II. of 1819.

2. In reply the Court direct me to acquaint you, for the information of the judges of the Calcutta Court, that they are of opinion the principle of the rule laid down in paragraph 3 of their letter to your address, under date the 15th March, 1833, must be considered equally applicable to the first petition, that is to say, the petition of regular appeal preferred under Clause 7, Section 30, Regulation II. of 1819, from the decision of a collector, as to the petition for a special appeal in cases of that nature, and, in like manner, to the pleadings, exhibits, &c. in both appeals.

3. Section 2, Regulation X. of 1829, the Court observe, rescinds all Regulations and parts of Regulations then existing in regard to the collection of stamps, and as it contains no provision exempting Clause 7, Section 30, Regulation II. of 1819 from its operation, the latter enactment must be held to have been repealed by it equally with all other laws on the same subject; and it having been ruled by the two Courts,* with reference to the provisions of the Regulation first cited, and in consequence of Section 8, Schedule B, Regulation X. of 1829 making no exception in favor of petitions for special appeals in cases of the nature of those under consideration, that full stamp duty is leviable thereupon, the Court consider that, by a parity of reasoning, petitions for a regular appeal in such cases as well as the pleadings, exhibits, &c. connected therewith are also chargeable with the full amount of duty, in the same manner as all other regular suits instituted in the established courts of civil judicature.

* See construction No 768.

To the Secretary to the Sudder Board of Revenue, Western Provinces, dated 20th November, 1835.

No. 988.
1795
Reg XXXIV. Sec. 2.

I am directed by the Court to acknowledge the receipt of your letter, No. 107, under date the 30th ultimo, with its several enclosures, on the subject of the pensions payable from the Benares treasury under the provisions of Section 2, Regulation XXXIV. of 1795.

2. The Board not having been able to obtain for the Court an inspection of the documents called for in Mr. Jackson's letter to your address under date the 6th March last, their construction of the abstract point of law, submitted to them under the orders of Government, must be understood to be given solely with reference to the papers now before them, and on a consideration of the regulations bearing on the question. With this qualification, and reserving to themselves the liberty of exercising their own judgment

with respect to any claims of this nature which may hereafter come judicially before them, and of determining each case strictly according to its merits, they direct me to request you will inform the board that they concur in the opinion expressed in the letter to your address from the secretary to Government in the Revenue Department, under date the 3d February last, that the pensions in question are not transferable by sale, gift, or otherwise, for a longer period than the lives of the original grantees; and that, on failure of heirs of the original grantees, they must be considered to escheat to Government as lapsed or expired grants.

3. In support of this construction the Court observe that by Section 15, Regulation XLII. of 1795, the altumgha, ayma, and mududmaash grants specified therein, are expressly declared to be transferable by sale, gift or other mode of conveyance, and all that is required of persons succeeding to them is to register them within six months after the date of their succession; but Section 2, Regulation XXXIV. of 1795, although passed nearly at the same time, confers no such power of alienation on the holders of the pensions mentioned in that enactment, and a distinction is thus clearly drawn between the two classes of grants, since, though both are hereditary, the former only are declared open to transfer.

4. And this opinion, the Court observe, would further appear to be strengthened by a reference to Regulation II. of 1813, which, as stated in the preamble, was enacted with a view to prevent the Government from being defrauded of its dues by persons receiving pensions, who are not legally entitled to them; and though, as appears from the second paragraph of your letter under acknowledgment, the provisions of that Regulation may not have been acted upon, they are expressly made applicable by the second Section of it to pensions of the nature of those specified in Regulation XXXIV. of 1795, while the grants described in Regulation XLII. of the same year, were subjected to no such revision.

The Presidency Court, on the 18th December, 1835, concurred in this construction.

November 20th, 1835.

No. 989.

The collector cannot without application to the judge direct a mooniff to sell property in liquidation of arrears of revenue.

The Presidency Court held, on a reference from the judge of Dacca, that a collector is not competent, without application to the judge, to issue a perwanah to a mooniff to sell personal property and houses attached by his nazir for arrears of public revenue.

The Western Court, on the 26th December, 1835, concurred in this construction.

November 28th, 1835.

From the Judge of Zillah Cuttack to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 13th November, 1835.

No. 990.

1814
Reg XXIII Sec 15, Cl 4.

I have the honor to forward copy of a proceeding this day received from the mooniff stationed at Balasore, for the orders of the Court of Sudder Dewanny Adawlut.

2. Clause 4, Section 15, Regulation XXIII. of 1814, parties appointing vakeels in the moonsiffs' courts are directed to settle the amount of the fees with their pleaders, and no deposit is required to be made on this account; but there is no provision made in the enactment for securing a proportion of the fees to a pleader, who may be substituted for another who commenced the pleadings.

3. The pleaders in the moonsiffs' courts realize the fee demandable by them from their clients, previous to acting for them, which mode is attended with much inconvenience. Firstly,—They do not pay so much attention to their clients' interests, as if they had the fees in anticipation; and secondly,—If a pleader is changed while the suit is pending, or if he should die, or be removed, the person appointed to conduct the case in his stead can demand no fee from his client, as whatever was demandable has been paid and received in advance. It appears therefore that some order is required to guard against loss to either clients or pleaders, and I beg to submit the subject therefore for the consideration of the Superior Court.

To the Judge of Zillah Cuttack.

I am directed by the Court to inform you that the Regulations do not require the zillah and city judges to interfere in regard to remuneration of their vakeels by parties in the moonsiffs' courts. They therefore desire that you will refrain from doing so further than to intimate that if a party choose to change his vakeel he is bound to remunerate the individual engaged in the second instance, as well as him who was entertained originally.

The Western Court, on the 2d January, 1836, concurred in this construction.—The letter to the Judge was issued on the 15th January, 1836.

December 11th, 1835.

No. 991.
1793
Reg III. Sec. 17

The following minute having been referred by Mr. Master, officiating judge, for the opinion of his colleagues, the majority of the Presidency Court held that the case therein alluded to was cognizable by the judge of the 24-Pergunnahs.

Minute of Mr. Master, dated 6th November, 1835.

At the request of Mr. N. B. E. Baillie, I beg to refer the following point for the opinion of the judges.

2. Mr. Baillie contends that Section 17, Regulation III. 1793, having never been rescinded, the Dewanny Adawlut of the zillah of the 24-Pergunnahs is strictly prohibited from entertaining any suit whatever against a person who may be an inhabitant of Calcutta at the time the suit may be instituted, or may become a resident within the limits of the town after the suit may be commenced.

3. In the case in which this reference is requested both the plaintiff and defendant are residents of Calcutta, but the cause of action is to recover possession of land situated within the jurisdiction of the 24-Pergunnahs. In admitting and proceeding with the suit, the provisions of Section 7, Regulation IX. 1819, were attended to by the judge of

the zillah; and in my opinion the objection urged by Mr. Baillie is over-ruled by the provisions of that enactment. To remove the doubt however, I beg to solicit the opinion of the other judges.

The minutes of the several judges were referred for the opinion of the judges of the Western Court on the 11th December, 1835. The following is the Western Court's reply:

From the Officiating Register, Western Provinces, to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 8th January, 1836.

I am directed by the Court to acknowledge the receipt of your letter, No. 2926, under date the 11th ultimo, with its enclosed copies of minutes recorded by the judges of the Calcutta Court on a construction of Section 17, Regulation III. of 1793.

2. In reply, I am directed to acquaint you that the Court are unanimously of opinion, with the majority of the judges of the Calcutta Court, that the suit which gave rise to the present reference, was cognizable in the Court of the 24-Pergunnahs.

Exception with respect to the town of Calcutta, Reg III. 1793 and Reg. II. 1803, Section 12.

The town of Calcutta, which is under the immediate jurisdiction of His Majesty's Supreme Court of Judicature, not being comprised in that of any Zillah or City Court, the above powers do not include the cognizance of any suits for land or other real property situated within the limits of Calcutta; nor *any personal actions* against the fixed inhabitants of that town, which may not be for arrears of revenue, or may be legally considered exclusively cognizable by the Supreme Court.

3. In the support of this opinion the Court direct me to adduce the passage noted in the margin from Harington's Analysis (volume I. page 36,) and to express their entire concurrence in the construction therein given to the term "nor any suit whatever," as used in the Section of the Regulation above cited, viz. that it was intended to apply to personal actions only against the fixed inhabitants of the town of Calcutta, and not to exclude from the cognizance of the zillah court of the 24-Pergunnahs suits, for land or other real property situated within the limits of its jurisdiction, brought against residents of that town. That such was the intention of the legislature would appear from the fact that the real property excepted from the jurisdiction of the court for the 24-Pergunnahs is especially defined to be lands, tenements, &c. situated within the limits of Calcutta, and that consequently suits for such property, when situated in the 24-Pergunnahs beyond the specified boundary, are within the cognizance of that court. The Court further direct me to observe that they understand the provisions of the Section under discussion to be similar in every respect to Section 12, Regulation II. of 1803, quoted by Mr. Harington as a corresponding enactment.

To the Officiating Magistrate of Moorshedabad, dated 18th December, 1835.

No. 992.
1819
Reg. VII. Sec. 3.

I am directed by the Court to communicate to you the following reply to the question contained in your letter of the 4th September.

Is a magistrate competent, on a complaint preferred under Section 3, Regulation VII. of 1819, by the wife of an Indo-Briton who refuses to support her, to require security from him to maintain

2. The law being a penal one must be construed literally. It does not authorize a requisition of security. The magistrate should

her (the wife alleging that the husband is about to leave the country;) or must the magistrate be content with a simple written agreement of the husband to afford an adequate sum to the wife?

require the husband to enter into an engagement in writing to provide for his wife, and should punish any, and every, subsequent breach of such engagement distinctly complained of and proved, as a misdemeanour, by imprisonment for a period not exceeding one month.

The foregoing construction was given in conformity to the opinions of the Calcutta Court and the Government of Bengal.

18*th December*, 1835.

From the Session Judge of Juanpore to the Register of the Western Provinces, dated 16th December, 1835.

No. 993.
1834.
Reg II. Sec. 2, Cl. 1.

The acting joint magistrate of Azimgurh having sentenced a prisoner, who had escaped from the roads, to two years' imprisonment and thirty stripes of a rattan with labor in irons, it appears to me that the sentence passed by that officer is contrary to the intent and meaning of Section 6, Regulation II. of 1834. I have therefore to request the opinion of the Court of Nizamut Adawlut.

To the Session Judge of Juanpore, dated 24th December, 1835.

I am directed by the Court to inform you that as that part of Clause 1, Section 5, Regulation XII. of 1818, which vested the magistrates with the power of awarding corporal punishment by stripes in cases of prisoners convicted of effecting their escape from confinement, must be held to have been rescinded by Clause 1, Section 2, Regulation II. of 1834, equally with all other enactments which authorized a sentence of that description; and the only cases excepted from the operation of the rule laid down in that Clause, are those described in Section 6 of the same Regulation, in which the infliction of corporal punishment may be considered absolutely necessary for the purpose of maintaining good order and discipline in the jails; the Court concur with you in opinion that the sentence of stripes passed by the officiating joint magistrate of Azimgurh, in the instance to which you allude, was illegal, and beyond his competency, and he should be required strictly to abstain in future from having recourse to that mode of punishment in cases of a similar nature.

The Presidency Court, on the 22d January, 1836, *concurred in this construction.*

December 24th, 1835.

From the Session Judge of Allyghur to the Register of the Western Provinces, dated 13th December, 1835.

No. 994.
1816.
Reg XII. Sec 8, Cl 4 Meaning of the term "cattle."

Doubts appearing to exist on the construction I have formed of the term "cattle stealing" mentioned in Clause 4, Section 3, Regulation XII. of 1818, I have deemed it the best to submit the subject for the decision of the Nizamut Adawlut.

2. Believing the Regulation to have been intended for the protection of cultivators, and finding the term in the Persian translation worded گاوان and بیلان, I reduced the sentence of a former joint magistrate in a case of stealing a pony from graze.

3. On the other side, it is intended to take the term in its widest occupation, which would not only include tattoos but cows, sheep, goats, &c., a latitude I do not think ever was contemplated, for it never can be supposed that the loss of any of the latter would cause the same injury as that of a bullock or buffalo, which deprives the cultivator of the means of supporting his family.

4. The immediate cause of this reference has been the officiating magistrate asking my opinion relative to an order passed by the acting joint magistrate, sentencing to two years' imprisonment two individuals for stealing two donkies valued at forty rupees.

To the Session Judge of Zillah Allyghur, dated 24th December, 1835.

I am directed by the Court to communicate to you the opinion of the Court that the term "cattle," as used in Regulation XII. of 1818, must be held to include not only bullocks and buffaloes, but all animals of the description of those alluded to in paragraphs 3 and 4 of your letter of the 13th ultimo.

The Presidency Court, on the 22d January, 1836, *concurred in this construction.*

December 24th, 1835.

No. 995.
1793.
Reg. XLIX.

On a reference from the judge of Hooghly, the Presidency Court held, on the 24th December, 1835, that suits under Regulation XLIX. 1793, cannot be referred to principal sudder ameens, either for trial or for investigation and report. In this construction the Western Court concurred on the 22d January, 1836.*

From the Officiating Judge of Zillah Dacca to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 8th December, 1835.

No. 996.
1823
Reg. XI. Sec. 28, Cl 2.

I have the honor of forwarding two original deeds of sale given by the collector for lands sold at his office, and beg to know whether I am bound (the deeds specifying so little or I may say nothing) to send an aumeen, or other officer of the court into the mofussil to try to give the purhaser possession.

2. The deed No. 1 recites that the howala rights in the howala, called Ramakant Sirma, belonging to Ramakaunt Sirma, added to zillah Rajnuggur from chukla Phoolberia, the collections being annexed to zillah Rajnuggur, the sudder jumma being twenty-four rupees, is sold, for a balance of revenue for 1240, for the sum of twenty-nine rupees to the buyer. The name mentioned is the recorded name in the collector's books,

* Altered by Sec. 8, Act XXV. 1837.

perhaps of a person dead twenty or more years ago, but if he was the last in possession, to what village or part of zillah Rajnuggur is the aumeen to proceed ?

3. The purchaser cannot bring any papers stating the amount of land or ryots' names or any other particulars.

4. The other deed is in the same style, the sudder jumma being ninety-eight rupees one anna : it is sold for one hundred and twenty-seven rupees.

To the Officiating Judge of Zillah Dacca.

I am directed by the Court to inform you that in the cases reported in your letter of the 8th December last, if the information furnished in the deeds of sale be insufficient to enable you to comply with the requisition made to you, to put the purchaser in possession, you should record the points on which it is defective, and your inability to proceed without full and specific information respecting them, sending a copy of your proceedings to the collector for his information, should the requisition have proceeded direct from that officer.

The Western Court, on the 29th January, 1836, *concurred in this construction.—This letter was issued 12th February,* 1836.

January 2d, 1836.

From the Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 29th May, 1835.

No. 997.

Jurisdiction of appellate courts in regard to the interests of several defendants affected by a decree, from which however only one of them appeals

I am directed to request that you will ascertain and communicate to the Court the practice and opinion of the Calcutta Court on the following point.

2. A decree is passed in a zillah court against several individuals; one of them appeals to the Sudder Court ; the rest do not appeal : in deciding this appeal case, is the Sudder Court competent to take up the case as regards the whole of the persons against whom the zillah decree was passed, should it see reason to do so, or must its proceedings be confined to that part of the decree which affects the rights and interests of the individual appealing? The Court rather incline to the latter opinion, but are desirous of learning the existing practice of the Calcutta Court before adopting it.

3. The rule in such cases would of course be equally applicable to all other appeals, such as those tried by the judge or principal sudder ameen.

To the Register of the Sudder Dewanny Adawlut, Western Provinces, dated 2d January, 1836.

I am directed by the Court to acknowledge the receipt of your letter of the 29th May last, No. 57.

2. The Court have delayed their reply in order to ascertain whether any precedents existed on record, of cases in which the Court has taken cognizance of, and decided on, the interests of parties to the original suit who have not joined in the appeal. No such precedent has been found.

3. They are of opinion that the appellate courts ought generally to confine themselves to the decision of the objections to the decree made by the parties who appeal,

but that, where obviously requisite for the ends of justice, the jurisdiction of the appellate court may extend to all the interests affected by the decree.

The Western Court, on the 22d January, 1836, concurred in this construction.

January 2d, 1836.

From the Assistant in Charge of the Judge's Office, Zillah Dinagepore, to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 10th December, 1835.

No. 998.

Circular orders, 6th February, 1835.

Rules for defining the duties of assistants in charge of the current duties of the judge's office.

I beg leave to solicit through you the opinion of the Court of Sudder Dewanny, on the following point in the rules for defining the duties of assistants or other officers in charge of the current duties of the offices of civil and session judge, which accompanied your letter of the 6th February, 1835.

2. In the 3d paragraph of these rules it is stated, that "the officer in charge is competent to carry into effect orders passed previously by the judge for the sale of property attached in execution of decrees, or other judicial process, or to stay the sale of such property pending the investigation of objections or claims preferred, but it shall not be competent to the assistant or other officer to hold such investigation or to issue orders for the sale of such property except when it may be of a perishable nature." I beg to be informed, whether this paragraph renders it imperative on the officer in charge to stay the sale of any property, which has previously been ordered by the judge to be sold in every case, in which a petition is given stating objections or preferring claims, or whether he is allowed to refuse to delay the sale without any investigation, but merely on the ground that the objections stated or claims preferred in the petition are insufficient reasons for such delay.

3. I am induced to request information on this point as many decrees of long standing have lately been ordered to be executed by this court, and consequently the petitions of owners of attached property for a delay of the sale are numerous; and as all investigation is forbidden by the rules abovementioned, I am unwilling to refuse the delay requested, and have consequently in all cases postponed the sale till further orders, taking security from the petitioner when it seems advisable.

4. I beg also to be informed whether I am competent to pass orders on summary appeals from the decisions or orders of sudder ameens, moonsiffs, &c. under the provisions of Regulation XXVI. 1814, Section 3, or to pay over sums of money in deposit to parties who have obtained a decree for the same but have not procured an order for the money from the judge.

To the Officer in Charge of the Judge's Office, Zillah Dinagepore.

I am directed by the Court to communicate to you their opinion, that you are competent to suspend the execution of an order passed by the judge for the sale of property, if, in the exercise of a sound discretion on a perusal of the petition objecting to the sale, you consider it right to do so; but that you cannot hold any investigation with a view to ascertain the truth or otherwise of allegations or claims contained therein.

2. With reference to your concluding paragraph I am directed to state that, on a petition of summary appeal being presented, you are not competent to make any enquiry on the merits of the case, but should merely record the date of its presentation, and let it lie over for the next coming judge; and further, that you are not competent to pay any money in deposit unless under an order passed by the judge before you received charge of the office, or unless the payment be directed by an express order of this Court or of any other court in execution of whose decree it may have been deposited.

The Western Court, on the 5th February, 1836, *concurred in this construction.—Issued 10th February*, 1836.

January 8th, 1836.

On the 8th January, 1836, *Mr. Braddon submitted the following Minute for the opinion of his Colleagues.*

No. 999.
1793
Reg III Sec 16.
1803
Reg. II. Sec. 10.

A. sued B. for the recovery of a village, which at the time of the settlement B. contrived to get wrongfully included in his own talook as part and parcel thereof. The Court decreed the village to A., directing its disjunction from B.'s estate and its being separately assessed by the collector. But B. having appealed against the decision execution was stayed, and pending the appeal the whole of B.'s talook was sold for balance of revenue, and the purchaser having been put in possession of the village in question along with the other part of the property, B. declined proceeding with the appeal, and it was accordingly dismissed. B. however eventually succeeded in getting the public sale set aside by the courts of judicature, and A. who came forward as a third party in the case claiming the village, was referred to a regular suit against B. I am desirous therefore of obtaining the opinion of my colleagues whether, under the foregoing circumstances, the decree obtained by A. was not final and conclusive against B., and whether on the sale of B.'s estate being annulled it ought not to have been executed, instead of A.'s being referred to a new suit to establish his right to that which had already been adjudged to him by a competent tribunal, and the appeal from which had been dismissed on the default of B. to proceed with it.

Connected with this case I further solicit the opinion of the judges upon another point, namely, A. having in pursuance of the above order brought an action against B. for the recovery of the village, a decree was passed by the sudder ameen in his favor, and on B.'s appealing from it the zillah judge discovered that B. after the institution of A.'s suit, and notwithstanding he was in possession of the village, had also filed a suit against A. to *have himself declared the malik of it.* The question therefore is, whether the zillah judge, merely upon having B.'s petition of appeal before him, and without deciding it, was competent, under the rules contained in Section 16, Regulation III. of 1793, to dismiss B.'s suit without issuing the prescribed notice to A. to appear and answer to it. The words of the Section in question bearing upon the point are as follows—"The zillah and city courts are prohibited *entertaining* any cause which, from the production of

8 Jan
5 Feb. } 1836.

a former decree or the records of the court, shall appear to have been heard and determined by any former judge or any superintendent of a court having competent jurisdiction."

With reference to the first question the Court were of opinion that the decree obtained by A. was final, and ought to have been executed. The question involved in the concluding paragraph was forwarded for the opinion of the Western Court.

From the Officiating Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 5th February, 1836.

I am directed by the Court to acknowledge the receipt of your letter, No. 46, under date the 8th ultimo, with its enclosed copies of minutes recorded by the judges of the Calcutta Court on a question involving a construction of Section 16, Regulation III. of 1793.

2. The only point on which the Calcutta Court would appear to desire the opinion of this Court is as to what was the proper course of proceeding to be observed by the judge in regard to the disposal of the claim preferred by B., on discovering that a suit had already been instituted by A. in reality for the same cause of action, and which was at that time pending in appeal before him from the decision of the sudder ameen passed in favor of the plaintiff.

3. On this point the Court at large direct me to observe that as the judge had proof before him of the institution of the prior suit by A. which was furnished by the records of his office, they are unanimously of opinion with the majority of the judges of the Calcutta Court, that under the rules laid down in Section 16, Regulation III. of 1793, he was fully competent, on the information before him, to dismiss the suit of B. without issuing any notice to the other party to appear and answer thereto.

From the Officiating Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 5th February, 1836.

No. 1000.

Execution of process of sale and arrest in *jurisdictions* other than that in which the decree was passed and is in course of execution.

I am directed by the Court to request you will submit, for the consideration and opinion of the Calcutta Court, the accompanying copies of the correspondence noted in the margin.*

2. The Court propose, with the concurrence of the Calcutta Court, to answer the question submitted by the additional judge of Ghazeepore, in the concluding paragraph of his letter, in the negative. They observe, however, that cases may arise in which it would be proper and necessary for the court called upon to execute the process of another court, either for the arrest of the person against whom it issued, or the sale of property, to suspend execution pending a reference to that court in regard to any objections taken to its order, though the final decision in such cases would still rest with the court issuing the process.

* Copy of a letter from the additional judge of Ghazeepore, dated 4th January, 1836.

Ditto ditto to the judge of Benares, dated 15th January, 1836.

Ditto ditto from ditto ditto, 25th January, 1836.

3. As regards the first of the two cases out of which the present reference arose, the Court observe that as the land, ordered to be sold by the additional judge in satisfaction of a decree of the Sudder Dewanny Adawlut, though attached to the collectorate of Benares, was under the jurisdiction of the civil court of Juanpore, the judge of the former city was not competent to exercise any interference in the matter, but should have referred the parties objecting to the sale of the lands in question either to the judge of Juanpore, or additional judge of Ghazeepore for such notice as their claims might appear to require.

4. With respect to the second case the Court consider that the late judge of Benares exceeded his competency in directing the release of the person arrested therein, under the process of the court of Ghazeepore, without previously obtaining the acquiescence of that court in his so doing: the opposite party, however, does not appear to have preferred any appeal from that order; nor did the court of Ghazeepore make any remonstrance at the time; and as on the issue of a second process, in compliance with the requisition of the additional judge of Ghazeepore, the nazir of the Benares court reported that the person ordered to be arrested was not forthcoming, the Court are of opinion that no other course was left to Mr. Gorton to pursue but to forward a copy of his nazir's return for the information of the additional judge.

From the Additional Judge of Zillah Ghazeepore to the Officiating Register of the Western Provinces, dated 4th January, 1836.

* Government and Rajah Oodwunt Narain Sing, Appellants, versus Ranee Golaub Koour and Kamtapersaud, &c Respondents.

In this case,* although I have mentioned the circumstances in a Persian proceeding under this date for the Court's information, I think it proper more particularly to bring them to the Court's notice. In execution of a decree of the Sudder Dewanny Adawlut, a list of property situate in the jurisdiction of the judge of Juanpore and of the collector of Benares having been given in to this court, I requested the judge of Juanpore to have it sold and to remit the proceeds of sale to my court. I have now received a proceeding from the judge of Juanpore, with copy of a proceeding of the collector of Benares, in which the collector states that the judge of Benares has prohibited the sale for the present; of the reason I know nothing and have addressed the judge of Benares on the subject; but I consider the judge of Benares incompetent to forbid the execution of my order, especially without assigning a reason for so doing, and that it was incumbent on that officer to bring his objections to my notice, when I should of course have been ready to give every attention to them. I cannot however imagine any reason for stopping the sale, the property not being situate in the jurisdiction of the judge of Benares.

† Surfraz Ali, Plaintiff, versus Ramlol and Joogool Kishore, Defendants.

In the same manner in another case (see margin†) a hookumnameh in execution of a decree having been issued against a certain Joogool Kishore defendant, from my court, through the Benares court; the person attending on the part of the decree-holder pointed out the said Joogool Kishore, and he was consequently arrested and brought before the Benares court, when the judge of that court released him unconditionally, stating for my information that he denied that he was the Joogool Kishore in question. The decree-holder

immediately requested that the court would send a proceeding requesting that he might be again arrested, which I did, but the individual against whom the process had issued in the mean time found means to conceal himself. The decree-holder positively asserted the identity of the person arrested, (which was attested by four peadahs who were present at the time of his arrest,) and complained bitterly of his release. Now it seems to me that the judge of Benares was not authorized in releasing the person arrested without proper enquiries on oath regarding his identity; and that had any person who disputed it even deposed on oath to the negative in opposition to the assertion of the decree-holder, he should not at all events have been released without sufficient security for his re-appearance when called for and without a reference to the court issuing the decree.

2. I have mentioned these two cases circumstantially with the view of obtaining the opinion of the Court on this point, viz. whether the person of an individual can be released from process of arrest, or his property from attachment and sale, by any other authority than that which issued the process. It would seem to me that a previous reference should be made to the authority issuing the process in each instance.

The Presidency Court, on the 11th March, 1836, concurred in the construction of the Western Court.

February 5th, 1836.

From the Officiating Judge of Zillah Nuddea to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 21st December, 1835.

I have the honor to solicit the opinion of the superior Court on the following points.

No. 1001. 1831. Reg VIII.

1. Are summary cases made over by the collector to the civil court under Regulation VIII. 1831, in consequence of regular suits having been previously instituted relative to the same matter, to be numbered and decided separately; or are the papers connected with them to be amalgamated with, and form part of the nuthee of the regular suit, and both cases to be disposed of in one decree?

2. What is the precise meaning of the term "regarding the same matter" in Section 14 of the enactment above referred to? Does it imply that whenever a regular suit is instituted in the civil court, regarding *the rent of the same land* for which a summary suit has been previously brought before the collector, the former is to be made over for decision to that officer, and vice versa, or is the transfer to take place only when the cases involve claims to rent *not merely of the same land but also for the same period*? Unless some restriction of this kind is observed great confusion may arise, as the following case which has actually occurred in this district will shew. A. sued B. summarily before the collector for the rent of certain lands for 1240 B. S. and obtained a decree, to set aside which B. brings a regular suit. Before however the latter was instituted, A. had brought another summary action against B. for the rent of 1241 B. S., and according to the wording of the enactment the regular suit must be made over to the collector if by the expression "the same matter" is to be understood generally the rent of the same land.

3. By Section 8 of the above Regulation, in regular suits for arrears of rent the plaint is expressly allowed to be written on paper bearing a stamp of one-fourth of the prescribed value. Is this rule to be considered as applicable to *all* or *any* of the subsequent pleadings? The avowed object of the legislature in authorising a reduction in the value of the prescribed stamp is "to give additional encouragement to persons having claims to arrears of rent to prefer regular suits on account of the same;" and it may therefore be presumed that the provisions of the Section in question were meant to include all the pleadings filed on the part of the prosecution; while on the other hand there appears to be no obvious reason why the indulgence should be extended to the defending party.

To the Officiating Judge of Zillah Nuddea.

I am directed to communicate to you the following replies to the queries contained in your letter of the 21st December last.

2. In reply to the first question, I am directed to state that cases made over by the collector under Regulation VIII. 1831 must be numbered separately, and each decided as a distinct suit, though both decisions may be simultaneous.

3. 2d Question. The term in Section 14, "regarding the same matter," is to be considered as meaning that the cause of action in both suits is identical. The applicability of the rule can only be made by the judge or other officer acquainted with the details of each case. If, in conformity with this construction, you should experience difficulty in deciding the case referred to in the conclusion of the 2d paragraph of your letter, the Court will be prepared, on receiving intimation from you to that effect, and on your supplying more explicit information on the subject, to issue such further instructions as may appear to be requisite.

See Construction No 714

4. 3d Question. It has been ruled* that suits instituted under Section 8, Regulation VIII. 1831, are to be considered in all respects as regular civil suits; consequently the pleadings and all other papers should be written on stampt or plain paper, according to the circumstances of the case, in the same manner as if the suit had been instituted on full stamp.

The Western Court, on the 4th March, 1836, concurred in this construction.—Issued 15th April, 1836.

February 12th, 1836.

From the Session Judge of Zillah Bundelkund to the Officiating Register of the Court of Nizamut Adawlut, Western Provinces, dated 17th February, 1836.

No. 1002.

1803.

Reg. LIII. Sec. 2 Bribery and corruption on the part of ministerial officers in the revenue department, punishable as a misdemeanor

Two cases have been made over to this court for trial on the charges annexed, and the futwa in both declares the defendants liable to *akoobut*; but before issuing orders on the cases in question, I am anxious to be informed whether the charges are of a nature cognizable by this court under Section 2, Regulation LIII. 1803, or any other Regulation.

4 March, 1836.
25 "

2. It will be observed that of the parties accused two are officers in the revenue department and one a treasurer, whereas the regulations regarding bribery and corruption refer only to ministerial officers of the courts of judicature; nevertheless Jewun Ram, acting peishkar of the huzoor tuhseel, was punished by the Nizamut Adawlut on a charge of bribery, and Oodlall Kait, head writer in the collector's office of Tirhoot, was found guilty by the same Court, on the 22d May, 1820, of a misdemeanor in aiding and abetting in embezzlement.

To the Session Judge of Zillah Bundelkund, dated 4th March, 1836.

With reference to your letter of the 17th ultimo, in the case of Dwarkadoss and another charged in the first count with bribery and corruption, they being at the time ministerial officers of Government in the revenue department, I am directed to communicate to you the opinion of the Court that the acts abovementioned clearly amount to a misdemeanor according to the Mahomedan law, as shewn by the futwa of your law officer, and are punishable as such under the rule laid down in Clause 7, Section 2, Regulation LIII. of 1803.

2. In addition to the cases quoted in your letter in which this principle would appear to have been acted upon, I am directed to call your attention to the precedents established by the decisions of the Court in the trials cited in the margin,* to which you do not appear to have adverted.

The Presidency Court, on the 25th March, 1836, *concurred in this construction.*

March 4th, 1836.

* Government *versus* Lukmun. Page 229, Vol. II. Nizamut Reports. Government *versus* Ghoolam Akhee. Page 463 ditto. Government *versus* Zuem ool-Abadeen another. Page 37, Vol. III.

Resolution of the Presidency Court of Sudder Dewanny Adawlut, under date the 18th March, 1836.

No. 1003.

1831. Reg. V. Sec. 28, Cl. 1.

The Court, having read again the minutes communicated to the Court of Sudder Dewanny Adawlut for the Agra presidency with their letter of the 8th January last, and the Agra Court's reply dated the 5th ultimo, No. 166, resolve in concurrence with the opinion of the Western Court, on the following rule of practice.

2. Whenever it shall appear to the Court, that a sudder ameen or moonsiff has tried and determined a suit which, from its amount or other cause, was not legally within his cognizance, and that the zillah or city judge, without adverting to this fact, has decided an appeal therefrom according to its merits, this Court will admit a summary appeal from the judge's order; and, considering the original decision of the sudder ameen or moonsiff and the judgment of the zillah or city judge in the appeal equally null and void, will quash all the proceedings of the case, and direct the judge to cause the original suit to be tried *de novo* by the authority competent to do so.

Resolution of the Presidency Court of Sudder Dewanny Adawlut, under date the 25th March, 1836.

No. 1004.

Putnee talooks as such are sufficient security in cases appealed to the King in Council, if otherwise unexceptionable.

Resolved, with the concurrence of the Western Court, that a sudder putnee talook, unexceptionable in all respects, as such, shall be considered as sufficient security in cases appealed to the king in council, to the extent of the surplus proceeds thereof.

March 25th, 1836.

8 April, 29 May, } 1836.

From the Commissioner of Circuit for the Bareilly Division to the Officiating Register of the Court of Nizamut Adawlut, Western Provinces, dated 21st March, 1836.

No. 1005.

Magistrates are not competent to permit convicts to work on the roads, who have not been sentenced to labor

I have the honor to forward copy of a letter from the magistrate of south Moradabad of the 10th instant, and request you will intimate to me if the Court are aware of any objection to my authorizing the magistrate to comply with the prisoners' request to be allowed to work on the roads.

From the Magistrate of Zillah Moradabad to the Commissioner of Circuit for the 3d or Bareilly Division, Moradabad, dated 10th March, 1836.

I have the honor to submit that three prisoners, sentenced to imprisonment without irons, to labor inside the jail, have petitioned to be allowed to work on the roads and agree to have gyves put on their legs. As these men can certainly be employed on the roads with more benefit to the state, I solicit your sanction to send them to work outside the jail. I also solicit your authority to send other men on the roads, should they with the milder sentence of labor inside the jail to be altered.

To the Commissioner of the 3d or Bareilly Division.

In reply to the question submitted in your letter of the 21st of the preceding month, relative to the prisoners named in the margin,* I am directed to communicate to you the opinion of the Court that you are not competent to make any alteration in the sentence passed on those prisoners respectively.

* Shadee, Sibbah, and Sullah.

The Presidency Court, on the 8th July, 1836, concurred in this construction.

April 8th, 1836.

From the Officiating Register, Western Provinces, to the Register of the Presidency Court of Nizamut Adawlut, dated 15th April, 1836.

No. 1006.

1824 Reg XV.

I am directed to request you will submit, for the consideration and opinion of the Calcutta Court, the accompanying copies of a letter from the commissioner of circuit of the 2d or Agra division, under date the 6th February last, and of the answer which the majority of the Court, adverting to the object and design of Regulation XV. of 1824, as explained in the preamble, propose, with the concurrence of the Calcutta Court, to address to that officer in reply.

From the Officiating Commissioner of the 2d Division to the Officiating Register of the Western Provinces, dated 6th February, 1836.

Some public officers in this division having expressed a doubt, with reference to the Court's construction of Regulation XV. 1824, dated the 17th December, 1830, as to the answer which should be given to the following questions, may I request you will have the goodness to lay them before the Court for its reply?

Q. 1. Can a magistrate under the Regulation quoted interfere to maintain the possession of a mortgagee, in the event of the mortgager and the proprietor of the property attempting to eject him by force?

Q. 2. Would the circumstance of the registry or non-registry of the mortgage and transfer of the property (if a landed estate) affect the powers of a magistrate in such a case?

2. After a careful consideration of the Court's construction above alluded to, and in which the words "all parties not having each a permanent interest in the land or other property of which the possession is disputed" are used, I should be disposed myself to give a negative answer to both questions, though I am not quite certain that it would be the correct one in the case of a registered mortgagee as he might be looked upon pro-tempore as a proprietor.

To the Commissioner of Circuit, 2d or Agra Division.

I am directed to communicate to you the opinion of the Court on the first point referred in your letter of the 6th February last, that the provisions of Regulation XV. 1824, are applicable to cases of disputed possession between mortgagors and mortgagees whenever such disputes may appear to the magistrate likely to terminate in a breach of the peace; and as regards the second point, that it does not in any way affect the question whether the mortgage, or transfer of property under it, shall have been registered or not.

To the Register of the Nizamut Adawlut, Western Provinces, dated 20th May, 1836.

I am directed by the Presidency Court to acknowledge the receipt of your letter of the 15th ultimo, No. 308, enclosing copies of a letter from the commissioner of circuit for the 2d or Agra division under date the 6th February last, and of a reply to the same which the majority of the Court propose to transmit with the concurrence of this Court.

2. In reply, I am directed to state that the majority of the Court concur in the construction which the majority of the Agra Court propose to adopt in their answer to the commissioner.

May 20th, 1836.

To the Judge of Zillah Bhaugulpore.

No. 1007.

The local position of a Hindoo family does not necessarily determine the law by which their disputes ought to be decided.

I am directed to inform you that the case adverted to in your letter of the 23d March last should be decided according to the Hindoo law current in the pergunnah in which the family reside, provided it accords with the family usage, otherwise the latter must form the rule of guidance.

2. I am also directed to refer you to the cases noted in the margin,* as shewing that the local position of a family does not necessarily determine the law by which their disputes ought to be decided.

* Rajchunder Narain Chowdry, Appellant, versus Gocol Chunder Gop, Respondent. } Page 43, Vol. I. Select Reports.
Gungadutt Jha, Appellant, versus Sree Narain Rai and another, Respondents. } Page 11, Vol. II. Ditto.

The Western Court, on the 13th May, 1836, *concurred in this construction.—Issued 10th June,* 1836.

April 22d, 1836.

From the Secretary to the Sudder Board of Revenue, Western Provinces, to the Officiating Register of the Sudder Dewanny Adawlut for the Western Provinces, dated 29th March, 1836.

No. 1008.
1799 Reg. V 1803 Reg. III. Sec. 16.

I am directed by the Sudder Board of Revenue to request the favor of your submitting to the Sudder Dewanny Adawlut at Allahabad the following observations regarding doubts which appear to have arisen on the construction of Section 16, Regulation III. of 1803

2. The Board direct me in the first instance to state the circumstances under which the question was brought before them, and subsequently their views on the proper construction of the enactments in question, for the consideration of the Court.

3. A case came before the Board on occasion of a disputed succession to a landed estate; the collector had entered into a judicial investigation, taken an opinion from a law officer, and finally directed the parties to be put in possession of such shares as he considered to be their right.

4. The Board directed the whole of those proceedings to be annulled, and having seen cause to believe that many of the revenue officers in the Western Provinces were accustomed to usurp the exercise of judicial authority, and thereby in fact incur the penalty of contempt of court, a circular was issued prohibiting any such practice.

5. At the same time as the very act of adopting this illegal and irregular proceeding evinced on the part of the collectors an acquaintance with the laws enacted for their guidance, the Board judged it expedient to indicate to them distinctly under what department such cases would properly fall. This was done not with the remotest view of taking upon themselves to point out to the courts their duty, but to make the revenue officers understand that the utmost legal limit of their interference was confined to bringing the case to the cognizance of the only authority legally entitled to dispose of it.

6. The Board's view is that a collector is strictly an executive officer and has naturally no connection or concern with judicial authority. In this opinion they consider themselves borne out in the strongest manner by the latter part of the preamble to Regulation II. and by the whole preamble to Regulation III. of 1793 which may be considered as fundamental and constitutional laws. The Board have drawn the same conclusion from the fact of the collectors in their official capacity having been made subject to the jurisdiction of the courts.

7. The Board therefore consider that every instance, in which, from reasons of present expediency and necessity rather than from the dictates of sound and durable policy, judicial powers have in later times been given to collectors, must be looked on not as a rule but as an exception; and as a corollary to this conclusion they consider that the collectors must be limited strictly to that extent of judicial power which the law has explicitly conferred upon them.

8. Now the only judicial power which the law has conferred on collectors is, 1st, the power to try summary suits regarding rent and replevin; 2d, to try the validity of claims to hold land free of assessment; 3d, the power to try certain cases

conferred on collectors employed in making or revising settlements. No power has ever been given to try the right or title to succeed to or transfer landed property.

9. Collectors are directed by the Regulations, as ministerial officers, to record successions or mutations of parties on whom they are to look as responsible for the public revenue, when they find such to have occurred; but there is no authority given to them to question, still less to decide, the right to succeed or to transfer.

10. The Board however have found the collectors in the Western Provinces much inclined to usurp such a power, and their native officers (from obvious causes) much disposed to encourage them in this usurpation; and the Board are therefore desirous strictly to prevent any such, in their view, illegal and extra-judicial interference.

11. Yet it seems necessary that a power should somewhere reside, to declare who should, *vacante lite*, obtain possession, pending a solemn judicial investigation into the right of many claimants to succeed to a demised estate; and that power should, in the opinion of the Board, both according to the Regulations of Government and the rule of analogy, reside in the courts.

12. If such a power conforms in all respects with the essential functions of a court of equity, the Board direct me to remark, that they are told the province of equity is to prevent that evil which it is the business of law to redress. To reduce the question from a general definition to particular terms, it may be said to be strictly the province of equity to prevent by previous arrangement the injury and loss of property which must arise from contested management and uncertainty of title, in an estate charged with a heavy revenue to Government realizable by public sale.

13. It seems to the Board that the object of Regulation V. of 1799, and of Section 16, Regulation III. of 1803, is to provide for just so much interference on the part of the court as has been above stated to be an essential part of an equity jurisdiction.

14. By those laws the courts are prohibited to interfere where the deceased has left a will and appointed executors.

15. Also where there is a single heir entitled to succeed to the whole estate.

16. Also where there is more than one heir and they agree among themselves as to the management.

17. The policy and sound reason of these prohibitions are obvious. There is no case which can require interference before trial.

18. If of many claimants one or more may have taken possession (the Board would remark that the verb is in the preterite tense) the court can only interfere previously to trial by a demand of security. But if security be not given the court may interfere to protect the property, or, according to the definition of equity above quoted, to prevent the evil which law could only redress.

19. The Board now proceed to the case which they contemplate, and in which the law has fully acknowledged the equitable jurisdiction of the courts previous even to suit brought. The case is that in which there "may be no person authorised and willing to take charge of the estate of a person deceased."

20. The Board conceive that these two essential terms (authorized and willing) are to be understood in strict connection each with the other. There may be many persons *willing* to take charge of the estate, but the question is whether they be authorized also.

21. The Board, wishing to give a strong but desirous of putting a common case, will instance that of a man in full vigour of intellect managing his own landed estate, who dies of fever or any rapid complaint, intestate of course, and leaving several grown-up sons by different wives,—all are on the spot, each seizing the ryuts, calling on the police, and raining down petitions on the collector, the magistrate, and the civil court. There is no possibility of any one having taken possession, for all are engaged in a struggle. They will never agree—and who among them can be authorized in exclusion of the rest?

22. It seems to the Board to be the intention of the law that in such a case the civil court should interfere, and either put the estate in charge of one of the parties as administrator, taking security from him for the effects until there have been time for a decision on the claims of all by a regular suit, or that he should place the estate in charge of the collector to be kept in trust until some one shall bring suit to try his claim.

23. If the Board's view be considered just in this strong case then it will obviously be the duty of the court to exercise previous interference in every case where there may be several claimants and no one may have taken possession.

24. The Board would also beg permission to suggest that in considering a legal enactment, the whole context and the spirit of the whole enactment must be taken into the argument. In fixing the meaning of the expression "may have taken possession" in Section 4, there are, in the view of the Board, two points for consideration—1st, as above noticed, the verb being in the preterite tense, which implies a foregone act, something which occurred previous to the question being raised; 2d, that the possession referred to must mean legal and peaceable possession at the time it was taken, though subsequently challenged. It must be a taking possession, as declared in Section 3, "so far as the same can be done without violence:" where such previous peaceable possession is not, it seems to the Board that the Regulation authorizes and requires the courts of justice to interfere.

25. The Board find a reference to these enactments in the book of Constructions, pages 127-128, Baptist Mission Press edition, No. 310. In paragraph 4 of that letter, containing the construction referred to, the Sudder Dewanny Adawlut appear to consider the civil courts authorized to declare in whom the title rests, subsidiarily of course to and pending decision on a regular suit.

26. The Board have also heard of a similar decision on a case of some importance in zillah Burdwan or Nuddea, but they have not at present the papers at command.

27. The commissioner of the 4th division has forwarded to the Board copy of the Court's letter, dated 25th February, addressed to the judge of Bundlekhund; but as the reference made by the judge did not embrace the general question, the Board do not feel

themselves thereby precluded from requesting the Court to take the subject into consideration. The Board request the Court will be pleased to take the whole question into their consideration and favor the Board with their decision on the above point.

28. The Board direct me to submit that this question as regards them is far from a mere speculative matter. It is of great importance to the revenue administration to be authoritatively informed at an early period, in case of a disputed succession after the occurrence of a lapse, to whom they are to look as responsible for the Government jumma; and in the opinion of the Board no authority but a judicial one can resolve the question.

To the Secretary to the Sudder Board of Revenue, Western Provinces.

I am directed to acquaint you, for the information of the Board, that as intimated therein, the Court have consulted with the Calcutta Court of Sudder Dewanny Adawlut on the subject discussed in your letter, No. 14, under date the 29th March last; and they now direct me to communicate to you the following observations in reply.

2. The Court have again had before them the correspondence with the officiating judge of Bundlekhund, alluded to in the 27th paragraph of your letter, and after duly considering the circumstances therein detailed, they direct me to observe that they see no reason to alter the opinion expressed in their reply to that officer on the point referred by him, viz. that, in the particular cases which formed the subject of his reference, he was not competent to interfere except on the institution of a regular suit by the parties concerned.

3. In one of those cases, the Court observe, the dispute in regard to the succession lay between the widow of the deceased zumeendar and a person claiming as purchaser; and there cannot be any question, the Court apprehend that instead of certifying the case to the judge, and requiring him to pass orders in the matter under the provisions of Regulation III. of 1803, the collector should have proceeded to register the widow's name in the place of her husband's leaving the other party, if he thought proper, to institute a regular suit in the civil court under the alleged deed of sale for possession of the property sold. The circumstances of the other cases brought to the notice of the Court by the officiating judge of Bundlekhund were nearly similar to those just related: and the Court are of opinion that they should have followed the same course.

4. In the 4th paragraph of your letter, however, it is stated that many of the revenue officers in these provinces have been in the habit of exercising judicial authority in cases of disputed succession to the estate of a deceased zumeendar, entering into a judicial investigation of the claims of the several claimants, and, in some instances, directing the parties to be put in possession of such shares as appeared to be their right; it would appear therefore that the collectors have gone beyond the line of their duty, more especially in awarding possession. The Court observe that the rules for the guidance of the revenue authorities in such cases are clearly laid down in Section 41, Regulation XLII. of 1803, which requires that, on the receipt of a notice of any person having succeeded by inheritance to the property of a malgoozaree estate or lakhiraj tenure, the collector shall

institute such inquiry as shall appear necessary to ascertain the truth of the alleged succession, and if the same may appear to have taken place he is to cause the necessary entries to be made in the proper registers; and the Court are of opinion that if the collectors were enjoined strictly to conform to those rules, the inconvenience stated to have arisen, and of the existence of which the Court had no previous knowledge, would no doubt immediately cease.

5. With regard to the nature and extent of the jurisdiction to be exercised by the civil courts in cases of the nature of those under discussion, the Court direct me to observe that the general rule prescribed for their guidance is prohibitory of any summary interference; and although cases may arise which might justify an exception and require the interference of the civil authority, such for instance as the one described in the 21st paragraph of your letter, the Court can by no means concur in the general position assumed in the 23d paragraph, that it is the duty of the courts to exercise previous interference in *every* case where there may be several claimants merely on the ground that none of them had taken possession. But so much must depend upon the circumstances of each case that, in the existing state of the law, it appears to the Court that it would be inexpedient and open to objections to lay down, in the form of circular instructions, any further rules for the guidance of the judicial officers, who must regulate their proceedings according to the peculiar circumstances of each case, as it may arise or be brought forward either on the motion of the collector or by the parties interested, as provided for by Section 26, Regulation V. of 1812.

6. As however the subject is one of general interest and importance, and it is highly desirable that some clear and specific rules should be laid down for the guidance of the authorities of both departments, the Court propose to forward the correspondence that has taken place with the Sudder Board, to the Indian law commissioners with a view to their taking the subject into consideration, and introducing such provisions in regard to it into the civil code, now in the course of preparation, as may appear to them necessary and expedient.

The Presidency Court, on the 17th June, 1836, concurred in this construction.

May 19th, 1836.

Extract of a Letter from the Judge of Zillah Tipperah to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 9th April, 1836.

No. 1009.
1814.
Reg XXVIII
Secs 11 12
* Ramgopaul, Ramgovind and others, versus Rubbee Doss and others.

The suit noted in the margin* was instituted by the plaintiffs' claiming defendant and others as slaves, and the damages were laid at six hundred rupees. On the 8th Chyte 1241, B. S. a decree was given in favor of the former by the principal sudder ameen. On the 11th Assaur 1242 B. S. the defendant Rubbee Doss, being dissatisfied with the decision, presented a petition of appeal under the provisions of Section 12, Regulation XXVIII. of 1814, praying to be permitted to sue *in forma pauperis*. On perusal of the petition of appeal and the decree passed by the principal

sudder aumeen, it appeared to me that there was sufficient cause to merit a further investigation of the case in appeal; and I would at once have admitted it had I not entertained doubts as to the propriety of so doing, it being, a case, the subject matter of which appears in my judgment to come under the denommation of "personal injuries," laid down in the 4th Section of the Regulation above mentioned. I therefore deem it expedient to submit the point for the consideration of the Superior Court, and request the favor of your obtaining its opinion whether the construction I have put upon the aforesaid Section, regarding "slavery" coming under the head of "personal injuries," be correct or otherwise, and consequently whether Rubbee Doss should be permitted to sue in appeal as a pauper or not.

To the Judge of Zillah Tipperah.

I am directed to inform you that, in the opinion of the Court, a person adjudged to be the slave of another is entitled to appeal against the decision *in formâ pauperis.*

The Western Court, on the 10th June, 1836, concurred in this construction.—Issued 24th June, 1836.

May 20th, 1836.

Extract of a Letter from the Judge of Zillah Rajshahye to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 18th March, 1836.

No. 1010.

Circular Orders Nos 1, 90, and 164, Vol II. dated respectively, 6th June, 1828, 10th July, 1833, and 2d January, 1836.

Para. 5. There is yet another difficulty to which I must allude. The realization of the amount decreed being thus indefinitely postponed, (should my construction of the Court's order be correct,) on whom should the demand for interest accruing thereon be made? Any delay in the non-receipt of the full amount by the decree-holder is not the act of the individual against whom judgment is given, though in many cases perhaps originating in his collusion with connexions or dependents, one of whom is put forward as a claimant as often as the lands are advertised; to charge him therefore with interest would be unjust; the decree-holder, on the other hand, is entitled to interest on his decree till the whole amount is discharged.

To the Judge of Zillah Rajshahye.

With reference to paragraph 5 of your letter of the 18th March last, No. 16, I am directed to inform you that the Court consider it competent to you, under the circumstances stated, to impose the payment of the accruing interest of the debt on any claimant, whose objections may in your judgment be evidently collusive and litigious, or vexatious and unfounded, subject of course to an appeal to this Court.

The Western Court, on the 24th June, 1836, concurred in this construction.—Issued 8th July, 1836.

June 3d, 1836.

From the Session Judge of Bundelkund to the Officiating Register of the Court of Nizamut Adawlut, Western Provinces, dated 21st May, 1836.

No 1011.

1814 Reg XV Sec 2, Cl 3.

I have the honour to report, for the information of the Court, that, independent of the cases against Kishen Kishore, late serishtedar of the collector's office, entered in my monthly returns for April, there are three other cases committed for trial: but conceiving that the ends of public justice have been sufficiently answered by the punishment already awarded, under the discretion left to me by Regulation XV. 1814, I do not purpose proceeding with these, unless my award already issued shall be reversed in appeal by the Court, or the Court shall require me to enter on their investigation. I am particularly led to adopt this course in consequence of the very heavy list of cases pending.

To the Session Judge of Zillah Bundelkund.

Kishen Kishore

I am directed by the Court to acknowledge the receipt of your letter, No. 74, under date the 21st ultimo, in the case of the prisoner named in the margin.

2. In reply, I am directed to communicate to you the opinion of the Court, that under the provisions of Clause 3, Section 2, Regulation XV. of 1814, the terms of which are imperative, you are required to proceed with the trial of the remaining charges against the prisoner, or such number of them, until upon a consideration of the several acts of criminality established against him, you may be of opinion that the punishment of fourteen years' imprisonment, prescribed in the Clause above cited, is sufficient and adequate to the crimes charged, and that no reason therefore exists for trying the remainder.

The Presidency Court, on the 1st July, 1836, *concurred in this construction. June 10th,* 1836.

From the Officiating Session Judge of Zillah Hooghly to the Register of the Presidency Court of Nizamut Adawlut, dated 9th June, 1836.

No. 1012.

1818. Reg VI Sec. 3, Cl 4. Employment of vakeels in criminal trials.

With reference to an important trial which will soon come before me, I have the honor to solicit the opinion of the Court of Nizamut Adawlut, in regard to the employment of vakeels in trials in the Sessions Courts, whether permitted or not sanctioned by the Regulations, when the personal attendance of the prisoners may not be dispensed with.

2. I submit with deference, that Regulation VI. of 1818, and other Regulations which speak of vakeels in connexion with parties accused at criminal trials held in Sessions Courts, appear only to sanction their employment, as agents or representatives, when the accused party may be specially exempted from personal attendance, but neither contemplate nor authorize the interference of any person as vakeel between the judge and a prisoner in attendance at the trials.

3. Still however, with a view to afford every just opportunity to render the defence of a prisoner complete, I should feel disposed to permit him to receive the advice and counsel

of persons whom he might wish to consult during the trial, although the aid of a vakeel or agent specially authorized to plead and act on his behalf might be denied.

To the Officiating Session Judge of Zillah Hooghly.

I am directed to communicate to you, in reply to your letter of the 9th June last, the opinion of the Court, that parties committed for trial before a Sessions Court, and not exempted from personal attendance under the provisions of Section 9, Regulation VI. 1818, may be allowed to avail themselves on trial of the advice of vakeels or agents; but that such vakeels or agents cannot be permitted to plead or to interfere in any way whatever in the Court's proceedings.

The Western Court, on the 20th June, 1836, concurred in this construction.—Issued 8th July, 1836.

June 10th, 1836.

To the Officiating Commissioner of the 3d or Bareilly Division.

No. 1013.

A commissioner is not competent to authorise the release of a convict, either on security or otherwise, for the purpose of apprehending a proclaimed offender.

I am directed to communicate to you the opinion of the Court, that you are not competent to authorize the release from confinement, either on security or otherwise, of any convict under sentence, for the purpose specified in your letter of the 2d June last, that is, of apprehending proclaimed offenders.

The Presidency Court, on the 1st July, 1836, concurred in this construction.

June 17th, 1836.

From the Commissioner of the 4th or Allahabad Division to the Officiating Register of the Sudder Nizamut Adawlut for the Western Provinces, dated 4th June, 1836.

No. 1014.

1808.

Reg. XIII Sec. 13. Responsibility of the nazirs of criminal courts in reporting upon the validity of security.

I have the honor to request that I may be favored with the opinion of the Court on the following case of reference.

2. Under the provisions of Section 13, Regulation XIII. of 1808, nazirs of civil courts are held responsible for any wilful misrepresentation in reporting on securities which are filed for staying the execution of decrees, &c. but the same rule does not appear to have been extended to nazirs who are employed in fouzdaree courts. I request to be informed whether a fouzdaree nazir can be held responsible for, and be compelled to make good, such pecuniary loss as may result from the acceptance of inadequate security, which has been wilfully misrepresented by the nazir as good and sufficient for the purposes for which it was taken.

3. I consider it of importance that all doubt on the subject should be removed as in addition to reporting on security bonds filed in the magistrates' courts, the fouzdaree nazirs are occasionally required to attest others not unfrequently of large amount, which are referred to the magistrate by officers in the commissariat department.

To the Commissioner of Circuit of the 4th Division.

I am directed to observe that the rule quoted in your letter of the 4th of June last, is, as you remark, applicable only to nazirs of the civil courts. The Court are not aware of any regulation expressly declaratory of the responsibility of nazirs of the criminal courts under similar circumstances; but upon general principles they are of opinion, that in the event of its being shewn on a civil prosecution that the nazir of a criminal court had wilfully misrepresented the value or sufficiency of any security in regard to which he had been directed to enquire and report, and that loss had ensued in consequence of such misrepresentation on his part, he would be liable to the payment of damages at the discretion of the court before whom the suit was brought.

The Presidency Court, on the 8th July, 1836, concurred in this construction.

June 17th, 1836.

To the Judge of Moorshedabad.

No. 1015.

1793 Reg XXXVI. Sec. 7. 1803. Reg. XVII. Sec. 7.

I am directed to communicate to you the opinion of the Court, (in which the Court of Sudder Dewanny Adawlut for the Western Provinces have concurred,) that under the strict wording of Section 7, Regulation XXXVI. of 1793 and Section 7, Regulation XVII. of 1803, and the construction No. 14 of the printed book of constructions, dated the 29th November, 1805, the registry of a deed in any other district than that in which the land is situated, must be considered as inofficial, and as not entitling the deed to the preference conferred on registered deeds by Section 6 of the Regulations cited.

The Western Court, on the 8th July, 1836, concurred in this construction.—Issued in July, 1836.

June 17th, 1836.

From the Officiating Register of the Western Provinces to the Register of the Presidency Court of Nizamut Adawlut, dated 17th June, 1836.

No. 1016.

Duty of the commissioners in regard to the release and removal of sick prisoners.

I am directed to request you will submit, for the consideration of the Calcutta Court, the accompanying copies of a letter and its enclosures from the officiating commissioner of circuit for the 3d division under date the 6th instant, relative to the cases of certain prisoners under confinement in the jail of Moradabad, whose release, in consideration of their bodily infirmities, as certified by the civil surgeon, he has conditionally authorized, pending a reference to this Court.

2. As a general rule the Court propose, with the concurrence of the Calcutta Court, to inform Mr. Boulderson, that a commissioner of circuit is not competent, under the circumstances stated in his letter, to authorize the release from confinement, on security or otherwise, of any convict under sentence of imprisonment without previously obtaining the sanction of the Court to his so doing; but that whenever the bodily health of any

prisoner may be such as, in the opinion of the civil surgeon, to render his temporary removal from the jail or hospital absolutely necessary, either for his own recovery, or, if the disorder be of a contagious nature, for the safety of the other prisoners, or for any other good and sufficient cause, and the emergency of the case will not admit of a previous reference to the Court, the proper course for the commissioner to pursue, under such circumstances, is to authorize and direct the magistrate to engage any suitable building, which may be procurable for the accommodation of such prisoner either within the town, or, if change of air be the object of his removal, in any of the neighbouring districts, according as the surgeon may advise, adopting the necessary measures for his safe custody and to report the circumstance without delay for the information and orders of the Court.

June 17*th*, 1836.

To the Officiating Register of the Nizamut Adawlut, Western Provinces, dated 16*th July*, 1836.

I am directed by the Presidency Court to acknowledge the receipt of your letter of the 17th ultimo, No. 507, enclosing copies of letter from the officiating commissioner of circuit for the 3d division under date the 6th ultimo, and its enclosures, and of a reply to the same which the Western Court propose to transmit with the concurrence of this Court.

2. In reply, I am directed to state that the Court generally concur in the construction which the Western Court propose to adopt in their answer to the officiating commissioner, though they are of opinion that, provided a removal to a distance be deemed essential, and the disorder with which the sick prisoner may be affected be not contagious, the change might best be made to the jail hospital of some neighbouring zillah.

From the Officiating Judge of Zillah Shahabad to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 30*th May*, 1836.

No. 1017.

Power of a surety to alienate property, of which in the security bond he calls himself proprietor, but which is not specifically pledged as security for the principal debt.

May I request the favor of your obtaining for me the opinion of the Court on the following point? It is one which probably has been repeatedly before the Court and with respect to which its practice is sufficiently established.

A becomes surety for B (on the latter borrowing a sum of money designating himself as proprietor of certain estates,) but without expressly stating that such property is pledged as security for the debt. The security bond may generally be in the following terms: "Whereas B has borrowed so much money, I, proprietor of such an estate, bind myself as surety for the debt; in default of payment by B, I will liquidate the debt." In such case can A legally alienate the property of which in the bond he calls himself owner until the debt has been satisfied?

To the Officiating Judge of Zillah Shahabad.

I am directed to communicate to you, in reply to your letter of the 30th May last, the opinion of the Court, that supposing A on becoming security for B (on the latter's

borrowing a sum of money) to designate himself as proprietor of certain estates, without expressly stating that those estates are pledged as security for the debt, he (A) is not legally precluded from alienating the said property, during the continuance of his liability for the security into which he has entered.

The Western Court, on the 15th July, 1836, concurred in this construction.—Issued 27th July, 1836.

June 24th, 1836.

To the Officiating Register of the Nizamut Adawlut, Western Provinces, under date the 24th June, 1836.

No. 1018.

1822
Reg VII. sec. 24, C 3.
Issue of process by collectors to police officers.

I am directed by the Court to request you will lay before the judges of the Court of Sudder Dewanny Adawlut for the Agra presidency, the accompanying copy of a letter from the officiating commissioner of circuit, 12th division, dated the 16th ultimo, No 264, and its enclosures, requesting the Court's opinion as to the right of a collector, or officer exercising the power of collector, to issue orders to the police officers to aid in the execution of their process under the provisions of Clause 3, Section 24, Regulation VII. 1822.

2. The Court propose to communicate to the commissioner their opinion that the collector or other officer aforesaid has no authority to issue any orders direct to the police officers, except in very emergent cases, which should also be immediately reported to the magistrate; but that in ordinary cases, whenever the collector may have reason to apprehend resistance of his process, he should communicate his apprehensions to the police daroghu, who will be responsible for taking such precautionary measures as may in his opinion be necessary to prevent a breach of the peace.

The Western Court, on the 15th July, 1836, concurred in this construction.

June 24th, 1836.

From the Officiating Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny and Nizamut Adawlut, dated 1st July, 1836.

No 1019
1809
Reg VI

A question having arisen as to whether under the provisions of Regulation VI. of 1832, an East Indian who, by reason of his descent, may not be a British subject within the meaning, of the existing laws, is eligible to be employed as a juror or assessor on the trial of a native Indian, whether of Mahomedan or Hindoo persuasion, or of persons belonging to the same class as himself, I am directed to request you will submit the point for the consideration and opinion of the Calcutta Court.

2. The Court are of opinion that under the Regulation above cited and the constructions which have been given at different times, declaring persons of the class in question subject to the local courts in civil and criminal matters, in the same manner as other natives of India, they must be considered equally qualified with them to serve on juries,

or to be employed in either of the other modes laid down in the enactment under consideration; and they propose, should the Calcutta Court concur in this construction, to adopt it as a rule of future practice.

The Presidency Court, on the 29th July, 1836, concurred in this construction.

July 1st, 1836.

No. 1020.

1814
Reg. XXIII. Sec 74.
1832
Reg. VII. Sec. 7.

In reply to a letter from the additional judge of Burdwan, dated 11th June, 1836, the Presidency Court held that under the provisions of Section 74, Regulation XXIII. of 1814, the judge, when he has modified or confirmed the order of a native judge imposing a fine, is to proceed to realize the same under the same rules as are prescribed for the execution of decrees. By Section 7, Regulation VII. of 1832, the native judges are authorized to execute their own decrees. The Court are therefore of opinion that the judge may refer his order in such cases to them for execution.

The Western Court, on the 22d July, 1836, concurred in this construction.—The letter to the Additional Judge of Burdwan was issued 12th August, 1836.

July 1st, 1836.

To the Judge of Zillah Bundelkund, dated 8th July, 1836.

No. 1021.

1826
Reg. III.

With reference to your letter of the 10th March last, on the subject of the difference of opinion existing between yourself and the officiating magistrate of Banda, as to the extent of that officer's jurisdiction over prisoners confined in the dewanny jail under civil process, I am directed to acquaint you that under the provisions of Regulation III. of 1826, you are vested with no legal right to be considered as the medium of communication on the part of the magistrate with such prisoners.

2. At the same time the Court direct me to observe that under Section 6th of the foregoing enactment, you are fully at liberty to communicate with the prisoners in question whenever you may have occasion to do so, without reference to the magistrate.

3. Under this construction the officiating magistrate will of course recall the instructions issued by him to the darogah of the civil jail, desiring him whenever he had any reference to make either to your court or to the collector of the district in regard to any prisoner confined under civil process, to constitute his office the channel of communication; and you will direct him to continue to observe the practice which obtained with respect to matters of this nature prior to the issue of the orders in question.

Issued with the concurrence of the Presidency Court.

July 8th, 1836.

From the Officiating Judge of Zillah Shahabad to the Register of the Presidency Court of Sudder Dewanny Adawlut, under date the 23d May, 1836.

No. 1022.

1831.
Reg. V. Sec. 5. Cl. 2. Sec. 15. Cl. 2 Sec 18, Cl 1

Power of native judges to try and decide suits respecting the right in slaves.

I have the honor to request the opinion of the Court of Sudder Dewanny Adawlut whether, under Clause 2, Section 5, Clause 2, Section 15, and Clause 1, Section 18, Regulation V. 1831, it is within the competency of the moonsiffs, sudder ameens and principal sudder ameens respectively to try and decide suits respecting the right in slaves.

To the Officiating Judge of Zillah Shahabad.

I am directed to communicate to you the opinion of the Court that, as the provisions of Sections 5, 15, and 18, Regulation V. 1831, which define the powers of moonsiffs, sudder ameens and principal sudder ameens as to the cognizance of suits, make no exception to slaves, they must be looked upon in the same light as other personal property, and suits regarding them be held cognizable by the native judges. The Court at the same time direct me to add that they consider it highly inexpedient that such cases should go before a native, should the reference of them to a European judge be practicable.

The Western Court, on the 15th July, 1836, concurred in this construction.—Issued 29th July, 1836.

July 8th, 1836.

From the Officiating Judge of City Moorshedabad to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 18th June, 1836.

No. 1023.

1831
Reg V Sec. 16, Cl. 2.

I request you will do me the favour to lay the following questions before the Court of Sudder Dewanny Adawlut for solution:

1st. Can a principal sudder ameen, authorized to try appeals from decisions of moonsiffs, refer back any case to the moonsiffs for further investigation?

2d. If a principal sudder ameen should, on trying an appeal as above, be of opinion, that a moonsiff has improperly nonsuited or dismissed a suit brought in his court, can he return the record, and through the judge request an order to the moonsiff to re-admit and re-try the case?

To the Judge of City Moorshedabad, in reply to his letter of the 18th June, 1836.

1st. The Court are of opinion that a principal sudder ameen, authorized to try appeals from the decisions of moonsiffs, may refer a case to a moonsiff for further investigation.

2d. Should he be of opinion that a moonsiff has improperly nonsuited a case, he should return it to the judge with his opinion that the moonsiff should be directed to re-admit it and try it on its merits.

The Western Court, on the 5th August, 1836, concurred in this construction.—Issued 19th August, 1836.

July 8th, 1836.

Resolution of the Presidency Court of Sudder Dewanny Adawlut, dated 8th July, 1836.

No. 1024.
1800.
Reg. II. Sec. 8.

The Court, having had under consideration the fluctuating practice which obtains with regard to allowing or disallowing appellants to assign or mortgage their own lands in lieu of security pending the appeal, observe that Section 8, Regulation II. of 1806, which authorizes the "deposit of money or of promissory notes or other obligations of "Government or any other sufficient money security" *in lieu* of personal bail or security for money or other property, is silent in regard to an assignment of the land of the party assured.

2. They further observe that the admission of such assignment is not fair to the respondent, inasmuch as it deprives him of a portion of his security; for, in the event of the appellant being cast, the respondent might always in the first instance come on his lands in satisfaction thereof; by the formal assignment he obtains no additional hold on them, while he is deprived of the benefit arising from the security of the lands of a third party.

3. Under these circumstances the Court deem the assignment or pledge of the lands of the appellant in lieu of security inexpedient, and of but doubtful legality, and accordingly

Resolve—That such assignment or pledge be not in future received.

The Western Court, on the 12th August, 1836, concurred in this construction.

July 8th, 1836.

From the Officiating Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 8th July, 1836.

No. 1025.
1814.
Reg XXVIII.
Sec. 12, Cl. 3.

A question having arisen as to whether an appeal lies to the king in council from a summary order passed by the Court of Sudder Dewanny Adawlut, refusing on the grounds specified in Clause 3, Section 12, Regulation XXVIII. of 1814, to admit an appeal *in formâ pauperis* from the decision of a zillah judge, in which the sum or value awarded amounted to 50,000 rupees, the petitioner being, at the same time, left at liberty to institute his appeal on performing the conditions prescribed by the Regulations for persons not suing as paupers, I am directed to request you will submit the point for the consideration and opinion of the Calcutta Court.

2. The Court observe that in the case cited in the margin* it was ruled by the Court of Sudder Dewanny Adawlut that an order passed by a Provincial Court refusing to admit an appeal *in formâ pauperis* on the merits of the case, and without reference to the question of pauperism, was final and conclusive; and that in a note appended thereto, it is added that "the Sudder Dewanny Adawlut had on many occasions construed Clause "3, Section 12, Regulation XXVIII. 1814, as vesting the appellate authority with dis-"cretion to pass a final order not open to special appeal." The Court are of opinion that the same principle must be held to apply to orders passed by themselves of the nature of

* Syud Kulundur Ali, Appellant, versus Dhoomun Behee & others, Respondents Page 105, Vol. IV. S. D. Reports

that described in the preceding paragraph, and that consequently no appeal lies from such orders to the King in council; and should the Calcutta Court concur in this construction they propose to adopt it as a rule of future practice.

The Presidency Court, on the 4th August, 1836, concurred in this construction.

July 8th, 1836.

No. 1026.

1824 Reg X 1829 Reg 1 Sec 7

Government versus

1 John Sahib, alias DeCourcy, son of Mr R DeCourcy.

2 Pran Rai, son of Thenuk Sing.

3 Radhub Rai, son of Pran Rai.

Charge.—The first prisoner charged with taking the law into his own hands by causing to be apprehended, and afterwards torturing by heating a chillum in the fire and applying the same while hot, to the bodies of Ramdhun Ghose, Kunhya Ghose and Gopal Ghose, whereby they have been scorched, and with cutting off the prepuce of the said Ramdhun

Prisoners 2 and 3 charged with being accessories before and after the fact by holding the abovementioned prisoners before and while the said application was being made, and keeping them in confinement in several places for seven days afterwards with a view to suppress the crime.

From the Officiating Session Judge of Zillah Nuddea to the Register of the Presidency Court of Nizamut Adawlut, under date the 27th May, 1836.

In the case noted in the margin committed for trial before me at the sessions, an accomplice has been admitted as a witness by the magistrate of this district under the provisions of Regulation X. 1824, as modified by Section 7, Regulation I. 1829.

2. The case is apparently one of an aggravated nature, and it is presumable that, without the testimony of this individual, the evidence would be insufficient for the conviction of the prisoners.

3. The Court however have held (see book of constructions No. 535) that "*affray not being enumerated in Clause* 1, *Section* 3, *Regulation* X. 1824, *as one of the offences which a magistrate is authorized to tender a pardon to the persons concerned in*, the evidence of participation in a case of affray is not admissible against other individuals implicated in the same offence." By parity of reasoning, as the charge for which these prisoners are committed, does not come under any of the denominations of crime specified in the clause above referred to, the evidence of an accomplice in the present case would be inadmissible. But the Court have, since the enactment of Regulation X. 1824, ruled on another occasion (see construction No. 405,) in a case of abortion, which is not one of the offences enumerated in Clause 1, Section 3, abovementioned, that the offer of pardon is not restricted to one individual concerned.

4. Under these circumstances, I am desirous to be informed; 1st, whether the evidence of an accomplice as an approver is admissible or not in the present case; and 2dly, if it be inadmissible, whether the party, who, in consequence of having accepted the tender of pardon has been admitted as a witness, ought to be committed for trial as a prisoner in the case.

To the Officiating Session Judge of Zillah Nuddea, dated 28th July, 1836.

I am directed by the Court to inform you in reply to your letter of the 27th May last, that it has been ruled that the provisions of Regulation X. 1824, are not applicable to the case of John DeCourcy and others, so that the magistrate was not competent to admit one of the accomplices in the crime charged as an approver.

2. The Court however observe that it is competent to Government, under the provisions of Section 6, Regulation XIV. 1810, to pardon an individual charged with a criminal offence, and deeming the present to be a fit occasion for soliciting the Right

Honorable the Governor of Bengal to exercise his prerogative, they request that you will instruct the magistrate to make the necessary application.

The Western Court, on the 17th June, 1836, concurred in this construction.

July 28th, 1836.

From the Additional Judge of Zillah Burdwan to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 14th May, 1836.

No. 1027.

C. O Vol 2 1, June 6, 1833. 90, July 19, 1833. 104, January 2, 1836.

1 would again beg to bring before the Court the subject referred to in their circulars as noted in the margin.*

* No 104, 2d Jan. 1836.

2. In the form given at the end of the circular No. 144, it is stated, "that a perwanah be sent to the treasurer to hold, agreeably to the circular orders of the 6th June 1828, the amount proceeds of the sale in deposit for three months." On referring however to the circular No. 1, and to the Sections† of the Regulation quoted in it, it clearly appears, that only one month is allowed for objections to be made *to the Judge*, when any irregularity may have occurred in conducting the sale of real property; and if no objections should be made to the judge within one month, then the amount may be paid away at once. In case any objections should be made to the judge within one month, and the judge should overrule them, then by the Section noted in the margin‡, an appeal of three months lies to the Sudder, but by the circular No. 104, it is required, whether objections are made *or not made* to a sale, that the amount should, under the Sections of Regulation VII. of 1828 quoted in the circular No. 1, be kept in deposit for three months, while those Sections do really only provide for cases, where only *one month* is in the first instance allowed for objections to be preferred *to the judge*.

No. 90, 19th July, 1833

No 1, 6th June, 1828.

† Reg VII of 1825, Sec. 3, Cl 3. Sec. 5, Cl. 1.

‡ Sec 3. Cl. 5. Reg VII 1825.

3. The circular No. 90 refers entirely to cases where appeals are actually preferred from a judge's decision, and three months is certainly the period allowed for such appeals; but nothing whatever is said of three months to be allowed for an appeal to the Sudder, where *no objections* may be made in the *first instance to the judge* within one month either before or after a sale. The following is a summary of this question:

Before a sale takes place.

4. By the Sections§ and Clauses as noted in the margin, thirty days are allowed for claims and objections to be preferred *to the judge*; and if none are made, the sale may be at once concluded. If objections or claims are made and rejected by the judge, then by the Section as noted in margin‖ three months are allowed for an appeal to the Sudder against the judge's decision.

§ Reg VII of 1825, Sec. 3, Cl. 2 and 6, noted. The period of proclamation in Cl. 6, is that of the 30 days in Clause 2.

‖ Section 3, Cl 5.

After a sale takes place.

5. The Sections as noted¶ allow of one month for objections to be made *to the judge*, and for one month the money is to be kept in deposit,** and if no objections are made within one month after sale, the amount may be paid away. If objections are made to the judge

¶ Sec. 3, last part of Cl. 3.

** By Circular No 1 of 1828.

* Sec 8, Cl. 3 and Sec 5, Cl. 3.

within one month and they are overruled, then by the Sections as noted* the period for an appeal to the Sudder is three months.

7. No man can, agreeably to the practice of the civil courts, appeal to the Sudder Dewanny either before a sale takes place or after it is effected, until the judge has been first petitioned, and by the circular No. 1 and the sections quoted in it, one month is the period fixed for presenting petitions to the judge, but by the circular No. 164, it is generally understood, that this period is to be extended to three months. As it appears to me however, that the period of *three months* is for *appeals to the Sudder from the decision of the judge after claims or objections have been overruled by him*, I would beg to submit for the consideration of the Court, whether the proceeds of the sale of real property might not be paid away after the expiration of one month from the date of sale, provided no objections be made *to the judge*, within the period of one month allowed for such objections by the Sections of Regulation VII. of 1825, as quoted† in the circular No. 1 of 1828.

† Sec. 8, Cl. 3. Sec. 5, Cl. 2.

7. A proposal similar to this was made in the seventh paragraph of my letter of the 16th February last, but as it was not referred to in the Court's *reply*,‡ I fear I was not sufficiently clear and explicit in submitting the proposition for their consideration.

‡ Dated the 11th March, 1836.

To the Additional Judge of Zillah Burdwan, dated 29th July, 1836.

I am directed to inform you that the view taken by you in your letter of the 14th May last, No. 20, in regard to the retention of the proceeds of sales in execution of decrees, is in the opinion of the Court perfectly correct, and I am instructed to take this opportunity of briefly stating the measures which should be adopted in such cases.

2. When claims or objections are preferred to the zillah judge before the sale, and rejected by that officer, the sale must be postponed for three months from the date of the judge's order.

3. When objections are preferred to a zillah judge after the sale, and by him similarly rejected and the sale confirmed, the purchase money must be kept in deposit for three months from the date of the order of the judge rejecting the petition and confirming the sale.

4. If on the other hand no claims are preferred before the sale, it may take place in thirty days, and if, after the sale, no objections are preferred within thirty days, the purchase money may, in like manner, be paid to the decree-holder at the expiration of that period.

The Western Court, on the 15th July, 1836, concurred in this construction.

July 29th, 1836.

From the Judge of Zillah Rajshahye to the Register of the Court of Sudder Dewanny Adawlut, dated 8th July, 1836.

No. 1028.

1831 Reg. VIII. Sec. 6.

I beg to refer to the superior Court for their construction of Section 6, Regulation VIII. of 1831. Do the words "shall be restricted to the period of one year from the date of the delivery of the collector's decision," imply a year from the date of pronouncing

judgment? or do they grant the power of instituting a regular suit, to set aside a summary award, to a party at any period within twelve months after the delivery of recorded judgment in the form of a roobakaree to an individual furnishing the required stamp paper? The text and the margin appear to be at variance.

To the Judge of Zillah Rajeshahye.

I am directed to communicate to you, in reply to your letter of the 8th July last, the Court's opinion, that the period of one year, to which the admission of regular suits to set aside the awards of the revenue authorities is restricted by Section 6, Regulation VIII. 1831, should be calculated according to the principle laid down in Clauses 10 and 11, Section 8, Regulation XXVI. 1814.

The Western Court, on the 19th August, 1836, concurred in this construction.—Issued 9th September, 1836.

July 29th, 1836.

Extract of a Letter from the Commissioner of Circuit for the 18th Division, under date the 16th June, 1836.

No. 1029.
1824
Reg. XV.

Para. 3. With reference to the dismissal of one of the cases on default I avail myself of the opportunity of soliciting the opinion of the Court on the point, as to whether cases under Regulation XV. 1824, are liable to be dismissed on that ground.

4. In my judgment such a proceeding partakes much of the nature of an absurdity. The case is only brought upon the file by the *order* of the magistrate, for the express object of preventing a breach of the peace by declaring which party shall remain in possession, and subsequently to reject the case without deciding the point of possession, because one or both of the parties would prefer fighting out their quarrel to having it decided by the magistrate, appears to me a high mistake, and in a degree to authorize a recourse to measures of violence.

5. In the event of such a circumstance as both parties absenting themselves with a view to procrastinate the decision, I consider that the magistrate ought to issue an attachment under the provisions of Clause 3, Section 5, Regulation VI. 1813, but that in no case, should the cause be rejected from the file without a specific order as to possession.

To the Commissioner of Circuit for the 18th Division.

The Court are of opinion that if neither of the parties in a suit brought into the magistrate's court under Regulation XV. 1824, will appear and produce their evidence and proofs, the magistrate should strike the case off the file, taking such measures as may appear necessary to prevent a breach of the peace, extending even to the attachment of the property in dispute if deemed necessary to secure such prevention.

2. Should only one of the parties after due notice attend and produce his proofs, the case should be tried *exparte*.

The Western Court, on the 19*th August*, 1836, *concurred in this construction.—Issued* 9*th September*, 1836.

July 29*th*, 1836.

To the Register of the Nizamut Adawlut for the Western Provinces, dated 29*th July*, 1836.

No. 1030.

Annulment of commitments by session judges.

Declaration of the owner of stolen property in regard to its value, sufficient in the first instance to determine the court by which the case should be tried.

* Meetoo, servant of Syud Nazim Alee, peishkar of Monghyr Foudary Court, prosecutor,

versus

Nermul and others. *Charge.*—Nos 1 & 2. theft of property amounting to 543 Rs. and Nos. 1 to 6, knowingly receiving stolen property.

† Poorun Singh, prosecutor,

versus

Sookha alias Soolha *Charge.*—Receiving property taken from the house of the prosecutor in a theft committed on the 12th March, 1836. (value of property stolen 140 Rs.) knowing the same to have been stolen

I am directed by the Court to request you will lay before the judges of the Agra Court the accompanying copy of a letter from the session judge of Bhaugulpore and its enclosures, regarding the annulment of the commitment of the prisoners in the following cases.

2. In the first case noted in the margin,* the ground for annulment was the want of proof that the value of the property stolen was such as to render it incumbent on the magistrate to commit the prisoners. The Court propose to inform the session judge that the declaration of the prosecutor on oath as to the value of the property taken, the truth of which there is no reason to question, is considered sufficient, in the first instance, to determine the tribunal by which the case should be finally tried; and to direct him to desire the magistrate to consider his own orders on the case annulled, with exception to the acquittal and release of Moossummaut Mohees alias Mohnee, and recommit the case for trial to the sessions court. In regard to Moossummaut Mohees it will suffice to notice that the session judge did not direct the joint magistrate to discharge her, but that as he has done so the Court do not consider it necessary to direct her recommitment.

3. The Court also propose to inform Mr. Lang, the joint magistrate, that he ought not to have disposed of the case, as he had determined to refer the point involved in it for the decision of the Court, until he had been again directed to do so by the session judge.

4. The commitment of the second case† was annulled principally because there was no proof that the theft had been committed. But the Court propose to inform the session judge that in such case he ought either to have acquitted the prisoner, or, if he thought the charge against him susceptible of farther proof, to have directed the joint magistrate to supply the defect, and not to have annulled the commitment, as the joint magistrate was fully competent, under the rules contained in Clause 3, Section 4, Regulation XII. 1818, to make over the prisoner for trial before the sessions court.

July 29*th*, 1836.

From the Officiating Register of the Western Provinces to the Register of the Presidency Court of Nizamut Adawlut, dated 2*d September*, 1836.

I am directed by the Court to acknowledge the receipt of your letter, No. 1814, under date the 29th July last, with its enclosures from the session judge of Bhaugulpore and officiating joint magistrate of Monghyr.

2. On the general question involved in the first case referred by the officiating joint magistrate, viz. as to how far the statement of a prosecutor, unsupported by other testimony, is to be received in cases of theft with reference to the amount or value of the

1030—1031.

29 July } 1836.
5 Aug }

property alleged to have been stolen,—I am directed to observe that the Court concur in opinion with the Calcutta Court, that the declaration of the prosecutor under such circumstances must be considered sufficient to determine in the first instance the tribunal by which the case should be tried, provided of course there be no reason to impugn the truth of it, on which point the magistrate would be competent to make such enquiries as he might think proper and proceed accordingly.

3. The Court also concur with the Calcutta Court in the opinions expressed in the third and fourth paragraphs of your letter under acknowledgment, on the other points involved in the reference from the session judge of Bhaugulpore.

From the Commissioner of Circuit for the 11th Division to the Register of the Presidency Court of Sudder Nezamut Adawlut, dated 13th July, 1836.

No. 1031.
1825.
Reg. IV Sec. 4.

I request you will obtain and communicate to me the Court's opinion on the following point. Are orders passed by a magistrate under the provisions of Section 4, Regulation IV. of 1825,* open to the revision of a session judge (who has been vested with powers to receive and try appeals from the magistrate in criminal cases under Act VII. of 1835) at all times, or merely when that officer is engaged in holding a jail delivery? And should a person be desirous of appealing at any other time from the order of a magistrate in such a case, to whom is the appeal to be made, to the session judge or to the commissioner?

2. The question may be said to resolve itself into this,—can the Act which in the opinion of the magistrate calls for the necessity of taking moochulkas or penal recognizances for the maintenance of the peace, be considered a criminal one, when no positive offence has been committed, and when the moochulka is taken expressly as a precautionary measure, to prevent, if possible, an expected breach of the peace.

3. As the session judge is clearly competent to receive appeals from the orders of the magistrate in such cases when engaged in holding a jail delivery, and as jail deliveries are now held monthly, I would certainly recommend that such appeals be made in all cases and at all times to the session judge.

To the Commissioner of Circuit for the 11th Division.

The Court are of opinion that appeals lie to the session judges from orders passed by the magistrate under the provisions of Section 4, Regulation IV. 1825, provided the order be passed in a regular criminal trial:—and that such appeals can be received at all times, whether the judge be sitting in the sessions court or not. But the orders passed on the report of a police darogha or in any other miscellaneous proceeding are appealable, as heretofore, to the commissioner of circuit.*

The Western Court, on the 26th August, 1836, *concurred in this construction.—Issued 9th September,* 1836.

August 5th, 1836.

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* Altered by Act XXV 1837.

To the Register of the Sudder Dewanny Adawlut for the Western Provinces, dated 12th August, 1836.

No. 1032.
Demand of security from pauper appellants to the queen in council.

I am directed by the Court to acknowledge the receipt of your letter of the 22d ultimo, No. 680, and in reply to inform you that the Court concur in the rule of practice proposed to be adopted by the judges of the Western Court, viz. that persons wishing to appeal to the king in council *in formâ pauperis* shall be required equally with other appellants, to furnish security (malzaminee) to the extent of five thousand sicca rupees, to cover the original costs of appeal; and in a further sum of five thousand sicca rupees to reimburse the Honorable the Court of Directors any expenses to which they may be put in the event of their being called upon, under the provisions of Section 22, 3 and 4 William IV. Cap. 41, to conduct the appeal on the part of the party.

August 12th, 1836.

From the Commissioner of Circuit 11th Division to the Register of the Presidency Court of Nizamut Adawlut, dated 21st May, 1836.

No. 1033.
1835.
Act VII.

The trials of appeals from the orders of the magistrates in criminal cases having been transferred to the session judges, I request you will obtain for me the opinion and orders of the Court of Nizamut Adawlut on the following point:

2. The judge in his civil capacity makes a person over to the magistrate, who convicts and punishes him. The session judge declines receiving an appeal from the magistrate's order, on the ground that he is a party concerned, and refers the appellant to the commissioner. What is to be done in such a case?

3. I beg to enclose copy of a rooboocarry from Mr. Morris, the session judge of Patna, referring a case of this sort to me. It would appear, that in his civil capacity he had handed over some persons to the magistrate for forcible resistance to a process issued from his court—an appeal is preferred against the order passed by the magistrate. It appears to me that the session judge is right in declining to entertain it, at the same time that I feel I am not at liberty to do so without the special sanction of the Court.

To the Commissioner of Circuit for the 11th Division, dated 12th August, 1836.

I am directed by the Court to inform you that as the order of the magistrate was passed on a regular criminal trial, the appeal must, under the existing law, be heard by the session judge.

2. I am further directed to add, for the information of the judge of Patna, to whom you are requested to forward a copy of this letter, that he should himself dispose of all common cases of resistance of civil process, under Section 25, Regulation IV. 1793; and that he should make over to the magistrate those cases only which may have been attended with acts of violence amounting to a breach of the peace.

The Western Court concurred.

August 12th, 1836.

From the Session Judge of Zillah Behar to the Register of the Presidency Court of Sudder Nizamut Adawlut, dated 18th July, 1836.

No. 1034.
Rule regarding prisoners tried under false names, but whose real names were discovered before completion of trial.

Having just concluded a trial, in which two persons, named "Bundhoo," son of "Kesree," and "Bechun," son of "Choolhun," are charged with burglary and theft on one count, and with having stolen property in their possession knowing it to be such, on a second count, have been tried, it appears on examining the witnesses for the defence, that the prisoners have, from their first apprehension, changed not only their own, but their fathers' names, "Bundhoo's" real name being "Bechoo" and his father's name "Ungnoo," and "Bechun's" real name being "Poonnai" and his father's name "Hurdut." I beg to be informed how I am to proceed with the case, as it is the first that I ever met with of the nature.

2. Neither the prosecutor nor his witnesses have had any previous acquaintance with the prisoners, and have called them by the names they have given themselves, and which now turn out to be false. This discovery would not have been made, but for the witnesses for the defence being asked, as the first question, if they recognized and were acquainted with the prisoners; they answered in the affirmative, and gave them the names which the prisoners now acknowledge to be theirs, and which they concealed from first to last. Their motive for this concealment appears to be that they were implicated in a case of affray attended with beating, and they have been endeavouring to conceal their real names for fear of being detected and tried in that prosecution.

3. I have refrained from taking the futwah of the law officer of this court, in this (to me novel) case. I never heard of a similar one before, and must await the orders of the Court, as to whether the proceedings are to remain as they are, and have the real names of prisoners inserted where necessary, or if they must be re-committed for trial, and the whole case be re-tried by this court to the inconvenience of the prosecutor and witnesses who must be sent for again to give evidence.

To the Session Judge of Zillah Behar.

I am directed by the Court to inform you, in reply to your letter of the 18th July last, that they do not deem any thing further necessary in the case of Bundhoo and Bechun, than that, after completing the trial in the usual manner, you should designate the prisoners in your warrant by the names under which they were respectively arraigned and pleaded, adding their since discovered real names by an *alias* thus—

Bundhoo *alias* Bechoo, Bechun *alias* Poonnai.

The Western Court, on the 2d September, 1836, concurred in this construction.—Issued 16th September, 1836.

August 12th, 1836.

No. 1035.
An European defendant in a civil suit filing his pleadings

The Calcutta Court held on a reference from the agent to the Governor General in Hazareebaugh, that an European defendant filing his pleadings and petitions in the

and petitions in the vernacular language may add English translations on unstampt paper.

Persian or vernacular language on the prescribed stamp may be permitted to add translations thereof in English on unstampt paper; and that all processes issued to him should be written in the ordinary language of the court and in English.

2. They further held that it is no part of the duty of the court to furnish the defendant with translations, but that he should procure a person duly qualified to interpret for him.

The Western Court concurred.—Letter to Agent to Governor General issued 16th September, 1836.

August 12th, 1836.

Deposition of an European witness must be recorded in English

The Calcutta Court, with the concurrence of the Western Court, subsequently held, on the 27th January, 1837, that the deposition of an European witness must be recorded in English, and a Persian translation made by the principal assistant himself, and annexed thereto.

To the Register of the Sudder Dewanny Adawlut, Western Provinces, dated 12th August, 1836.

No. 1036.

1793 Reg III Sec. 14. 1803 Reg. II. Sec 18, Cl 3.

* Roobakaree of Mr. H Shakespear, dated 16th March, 1834
Ditto of Mr B. H. Rattray, dated 16th April, 1834
Ditto of Mr W Braddon, dated 17th June, 1834
Ditto of Mr T. C Robertson, dated 17th December 1834
Ditto of Mr G. Stockwell dated 6th January, 1835
Ditto of Mr D C. Smyth, dated 6th August, 1835
Ditto of Mr C R Barwell, dated 6th January, 1836
Ditto of Mr N J Halhed dated 22d June, 1836

I am directed by the Court to request that you will favor me with the opinion of the judges of the Sudder Dewanny Adawlut for the Western Provinces on the following question.

2. A petitioner's estate was sold in 1803; objecting to the sale but not obtaining redress from the revenue authorities, he presented a petition in 1807 to the Provincial Court, by whom he was directed to apply to the Revenue Board. Ten years after, in 1817, he did apply to the Board, who, on the 17th February, 1818, referred him to the civil court. On the 5th December, 1829, (viz. after a lapse of eleven years and nearly ten months,) he instituted his suit in the zillah of Behar. The zillah judge dismissed the suit as barred by the rule of limitations and this Court confirmed the dismissal. Can the petitioner be considered to have saved his right of action by suing within twelve years from the date on which he was referred by the Board of Revenue to the civil court; or must the period within which he was bound to institute his suit, be reckoned from the date of the order of the Provincial Court referring him to the Board?

3. Copies of roobakarees recorded by the Court on the dates noted in the margin*. accompany this letter.

From the Officiating Register of the Sudder Dewanny Adawlut, Western Provinces, to the Register of the Presidency Court, dated 9th September, 1836.

Oomrao Singh versus Government, Jhumun singh and others.

I am directed by the Court to acknowledge the receipt of your letter, No. 1894, under date the 12th ultimo, with its Persian enclosures in the case cited in the margin *

2. In reply, I am directed to acquaint you that the Court at large concur in opinion with the majority of the Calcutta Court that the cognizance of the claim, involved in the suit in question, is barred under the general rule of limitations.

From the Officiating Judge of Zillah Sarun to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 14th July, 1836.

No. 1037.

Competency of a principal sudder ameen to pass orders in regard to costs incurred in the Sudder Dewanny Adawlut, in a case ordered for re-investigation

I will thank you to obtain the opinion of the Court of Sudder Dewanny Adawlut on the point mooted in the accompanying letter from Mr. D. DaCosta, the additional principal sudder ameen of this district. I conclude that the principal sudder ameen's decree will carry with it all costs, but as I am in ignorance of any specific rule of practice on the subject, I wish to be guided by the instruction of the superior Court.

From the Second Principal Sudder Ameen of Zillah Sarun to the Officiating Judge of Sarun, dated 13th July, 1836.

Previously to adjudging costs in the suit of Baboo Gunput Narain Sing *versus* Soodist Narain Sing, I beg to solicit your opinion and orders for my guidance, as I am unacquainted with any rule or regulation which applies to the point under reference.

2. Baboo Gunput Narain's case was originally tried by the register of this zillah and by him dismissed; this decision in appeal was upheld by the judge, and subsequently by the Provincial Court at Patna. As a last resort Baboo Gunput Narain appealed to the Sudder, where for reasons specified in their roobukary dated the 25th July, 1835, the orders of the several courts mentioned above, were reversed, and the former judge of this zillah was directed to transfer the cause for re-investigation, as an original suit, to one of the principal sudder ameens under him, with instructions to confirm the award of the arbitrator, tendered by the plaintiff, should it be just and equitable, otherwise to try it anew. The case came on yesterday, and as the award in my opinion was open to no impeachment, I decreed it in Baboo Gunput Narain's favor.

3. The question therefore is, whether in addition to present costs of the suit, I can adjudge him those incurred in the superior courts, no order either for or against this having been passed in the roobukary of the Sudder.

To the Officiating Judge of Zillah Sarun.

The Court are of opinion that the principal sudder ameen is fully competent in the case of Baboo Gunput Narain Singh *versus* Soodist Narain Singh, to adjudge the costs of all the courts in such manner as may appear just; his order being of course open to an appeal to your court.*

The Western Court, on the 2d September, 1836, concurred in this construction.—Issued 7th October, 1836.

August 12th, 1836.

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* See Circular Order No. 191, Vol. II., 4th November, 1836.

From the Assistant in charge of the Office of Judge of Cuttack to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 11th July, 1836.

No. 1038.

C O Vol II No. 181. February 6th, 1835—duties of assistants in charge of the office of civil judge

Under the orders contained in the Court's circular, No. 2638, of the 6th November, 1835, moonsiffs are directed to carry their decrees into execution—unless an order be issued by the appellate court for staying the same. As officer in charge of the judge's office I have no authority to sanction appeals, and there are now sixty-eight petitions of appeal presented awaiting the arrival of a judge. In the mean time the moonsiffs and sudder ameens are executing their decrees, and in many cases selling the property of an appellant. Under these circumstances I have stayed the sale of all appellants' property pending the arrival of the judge, and should I be in error request directions may be issued by the Court for my future guidance.

To the Register of the Western Provinces, dated 19th August, 1836.

I am directed by the Court to request you will lay before the judges of the Court of Sudder Dewanny Adawlut for the Agra presidency, the accompanying copy of a letter from Mr. E. Repton, assistant in charge of the office of judge of Cuttack, dated the 11th July last.

2. The Court propose, with the concurrence of the judges of the Western Court, to inform Mr. Repton that it was competent to him, under the concluding words of the first paragraph of the rules for defining the duties of assistants in charge, circulated on the 6th February, 1835,* to cause the execution of the decrees from which appeals had been preferred, to be stayed; taking the usual security from the party against whom the decree was given, if necessary.

* Such assistants or other officer shall "confine himself to "the exercise of such "part of the powers "of judge as may be "indispensably ne- "cessary for the im- "mediate execution "of processes, &c. "&c or for such other "cases of emergency "as will not admit of "delay."

The Western Court, on the 16th September, 1836, concurred in this construction.

August 19th, 1836.

From the Officiating Judge of Zillah Shahabad to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 19th July, 1836.

No 1039.

1827 Reg V Secs 3 and 4.

I have the honor to request the opinion of the Court of Sudder Dewanny Adawlut respecting the applicability of Sections 3 and 4, Regulation V. 1827, to estates exempted from the payment of revenue.

2. A person obtained many years ago a decree for two anna share of thirteen lakheraj villages; owing to obstacles thrown by the other party in the way of a full enforcement of the decree, the decree-holder has not yet been able to obtain possession; quarrels, &c. have been frequent: I wish to be informed whether I can appoint a manager to make the collections and provide for the management of the estate till the matter has been definitively settled, and if a division be ordered, whether the court is to carry it into effect or to issue a precept to the collector.

To the Officiating Judge of Zillah Shahabad.

The Court are of opinion that as the terms used in the preamble of Regulation V. 1827, are general, they include rent-free land as well as land paying revenue to Government, and therefore whenever it is necessary to cause such lands to be attached, it must be done by the issue of a precept to the collector.

The Western Court, on the 16th September, 1836, concurred in this construction.—Issued 30th September, 1836.

August 19th, 1836.

From the Acting Judge of Zillah Chittagong to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 13th May, 1836.

No. 1040.

Suits for inheritance should include the whole claim arising out of the same cause of action.

I beg leave to submit, for the consideration and orders of the Sudder Dewanny Adawlut, the copy of a letter dated the 6th instant, received from Mr. G. Doucett, principal sudder ameen, and copies of the petitions, &c. of plaint the subject of the reference.

2. The point involves one of practice which does not appear to me ever to have been duly determined, viz. in a claim of inheritance whether or no an heir may bring to issue his claim to hereditary right in any one zemindaree or talook or landed estate, reserving to himself the power of subsequently suing for the portion of any other estate, and whether in pursuit of claims of inheritance heirs are bound to bring forward their whole claim for both the real and personal effects, or whether they may sue in the first instance for either one or the other.

To the Officiating Judge of Zillah Chittagong, dated 5th August, 1836.

I am directed by the Court to communicate to you their opinions that suits founded on the right of inheritance should include the whole claim arising out of the same cause of action.

The Western Court concurred.

August 5th, 1836.

No. 1041.

1824. Reg X 1829 Reg I. Sec. 7.

The Western Court held on a reference from the officiating session judge of Agra that a "statement given by the prisoner on oath before the magistrate under the conditional offer of a pardon tendered to him agreeably to the provisions of Regulation X. of 1824, as modified by Section 7, Regulation I. of 1829," cannot be received as evidence against him in the event of his being committed to take his trial for the original offence before the court of circuit under the orders of the session judge, on the ground of his having failed to fulfil the conditions under which the pardon was tendered to him.

The Presidency Court, on the 16th September, 1836, concurred in this construction.

August 5th, 1836.

From the Officiating Judge of Zillah Dacca to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 19th July, 1836.

No. 1042.
1793.
Reg XXXIX.

I request you will have the kindness to obtain for me the instructions of the Court of Sudder Dewanny Adawlut on the following points:

1*st.* Whether a pergunnah cazee can sue for the amount of his fees for the performance of ceremonies?

2*nd.* If he can do so, though he may not have performed them, the parties having employed some one else to perform the duty?

3*rd.* Whether the zillah court should take any steps to give them possession of their pergunnahs?

2. My reasons for applying are, that on perusal of Regulation XXXIX. Section 8, 1793, it would appear they are only entitled to such fees as the parties choose to give, and that consequently they could not bring an action for fees; again I have been frequently applied to by the cazees, stating that certain villagers or ryots of certain talookdars, would not employ them, but got the ceremonies performed by others; I therefore wish to know if I should take any steps in the case, such as requiring mochulkas from the parties.

3. I am inclined to think that the cazees are appointed that the services of a duly qualified individual may be available to the inhabitants; but that they may if they think proper employ any one else, though the act performed by that person may not be valid in law.

To the Officiating Judge of Zillah Dacca.

I am directed to communicate to you the following replies to the questions contained in your letter of the 19th July, No. 364.

2. 1*st and* 2*nd Questions.*—A pergunnah cazee may sue to recover what he may consider himself entitled to, for fees of office; but it rests with the court to determine the extent to which such claim should be admitted and it must be remembered that the payment of fees is entirely voluntary (see Section 8, Regulation XXXIX. 1793.)

3. 3*rd Question.*—The zillah court cannot summarily interfere to put a cazee in possession of his pergunnahs, unless a decree expressly sanctions such a proceeding.

4. With reference to your third paragraph I am directed to observe that for all offices analogous to those which, under English courts, are included in the ecclesiastical department, such as the celebration of marriages and the performance of religious duties or ceremonies, the acts of any cazee, though not specially empowered for the immediate locality, would be valid and lawful; but that the drawing up and attestation of papers and making a record of them must be performed (to be legal) by the cazee of the jurisdiction in which the property specified may be situated.

The Western Court, on the 9th September, 1836, *concurred in this construction.—Issued 30th September,* 1836.

August 19*th,* 1836.

From the Commissioner of Delhi to the Officiating Register of the Suddee Nizamut Adawlut, dated 23d July, 1836.

No. 1043.
Jurisdiction in regard to a case of kidnapping a child in a foreign country but retaining it within the limits of the Company's territories.

I have the honor to submit, for the consideration and orders of the Nizamut Adawlut, the annexed copy of a letter, No. 101, from the officiating magistrate of the Hurriana division of this territory, under date the 21st instant, relative to a doubtful point of jurisdiction.

2. An inhabitant of Lahore, about five years ago, carried away a male child without the knowledge of the parents, subjects of the same state. He subsequently settled in the British dominions, and is now accused by the parents and found guilty of the crime.

3. The offence cannot, I presume, be punished by our courts, for the act of child-stealing was committed in a foreign territory, and as the child was not purchased and no proof exists of any intent to dispose of the boy unlawfully, the provisions of Regulations X. of 1811 and III. of 1832, do not appear applicable to the case.

4. The object of this reference is to ascertain, whether in the opinion of the Sudder Court, a commitment to the court of circuit on the minor charge of "retaining in his possession a child, knowing him to have been stolen," would be legal.

The question put in the concluding paragraph of the above letter was answered in the affirmative agreeably to the concurrent opinion of both Courts; Calcutta Court, 2d September, 1836,— Western Court, 30th September, 1836.

To the Officiating Session Judge of Agra.

No. 1044.
1810
Reg. XX Sec. 18.

The Court have again had before them your letter, No. 69, under date the 1st instant with its enclosures, requesting their opinion whether in cases of the nature of those referred to in Section 18, Regulation XX. 1810, a commanding officer is authorized and enjoined to take the informations of the prosecutor and witnesses on oath.

2. In reply, I am directed to inform you that with reference to the terms of the Section of the Regulation above cited, which give no authority to administer an oath, but merely require that in such cases the offender, if found within the limits of the cantonment, shall be arrested by the commanding officer and delivered over to the magistrate, the Court are of opinion that the commanding officer is not competent to examine the prosecutor and witnesses on oath.

The Presidency Court, on the 14th October, 1836, concurred in this construction.

September 9th, 1836.

From the Session Judge of Zillah Rajeshahye to the Register of the Presidency Court of Nizamut Adawlut, dated 5th August, 1836.

No. 1045.
1817.
Reg. XVII. Sec. 5.

I have the honor to acknowledge the Court's orders in the case of Bissoo Momin charged with murder of Attoo Bewah, and to report the due execution of the same. As however the fourth paragraph of the letter lays down a rule which appears to me to involve

a question of law, and will form a precedent in all future cases of a similar nature, I hope I may be excused if I solicit the Superior Court's expression of their sentiments to clear up my doubts on the particular point under reference.

2. I accordingly beg to submit the following question to the Court:—Is it within the competence of a session judge, without reference to the Nizamut Adawlut under Section 5 Regulation XVII. of 1817, to award punishment in a case, in which the conviction of the prisoner exclusively or principally depends on the deposition of witnesses objected to by the law officer, solely on the ground of exception set forth in the Mahomedan rules of evidence, which evidence he declares however to be good if no such legal exception exist, the session judge considering the objection raised to be unreasonable and insufficient, and the evidence good in all respects.

Extract from a Letter addressed by the Register of the Presidency Court to the Register of the Nizamut Adawlut, Western Provinces, dated 9th September, 1836.

The majority of the Court are of opinion that as the conviction of the prisoner rested principally on the evidence of the two females, whose testimony was held by the law officer not to be valid ground for such a verdict, it was incumbent on the session judge, under the Section cited, to refer the case for the Court's orders.

The Western Court, on the 23d September, 1836, *concurred in this construction.*

September 9th, 1836.

To the Judge of Zillah Mymensingh, dated 16th September, 1836.

No 1046

1829
Reg X Schedule B Article 8
1814
Reg XXVI Sec 7

I am directed by the Court to forward the following reply to your letter of the 4th July, No. 96.

2. The question submitted appears to the Court to be, in what manner the amount of cause of action is to be computed and settled when disputes on this particular point arise between the parties.

3. In reply, I am directed to refer you to Article 8, Schedule B, Regulation X. 1829, and to observe that the objections of the defendant to the plaintiff's valuation should generally be brought forward in his answer to the plaint, when the presiding judge, after such summary enquiry as may appear necessary, may permit the plaintiff, should the value be underrated, and without apparent fraudulent intent, to file a supplementary plaint agreeably to the provisions of Section 7, Regulation XXVI. of 1814. This decision will be liable to alteration or reversal by the court having appellate jurisdiction, either summarily or on a regular appeal. Cases may also arise in which, though the defendant have not objected to the plaintiff's valuation of the property in the court of primary jurisdiction, it would be the obvious duty of the court trying the appeal to notice and rectify the same

The Western Court, on the 2d September, 1836, *concurred in this construction.*

September 16th, 1836.

From the Officiating Judge of Zillah Shahabad to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 29th August, 1836.

No. 1047.

1829
Reg. X
Schedule B Article 8.
Valuation of property in suits of pre-emption.

I have the honor to request the opinion of the Court of Sudder Dewanny Adawlut respecting the amount or value to be inserted in the plaint in cases of pre-emption, whether in cases of malgoozaree land it is to be laid at thrice the sudder jumma, at the amount inserted in the deed of transfer between buyer and seller, or at the aggregate of both? I am obliged to make the reference as precedents of the superior Court are to be found for all three in this office, and there being no appeal from the zillah orders in the cases I have in view in making this reference, I am anxious to avoid falling into error.

To the Judge of Zillah Shahabad.

The Court are of opinion that, if the land, the right of pre-emption of which is claimed, be land paying revenue to Government either as an entire muhal, or a specific portion thereof with a defined jumma, the cause of action must be estimated at three times the amount of the sudder jumma, as prescribed by Article 8, Schedule B, Regulation X. of 1829; if lakheraje, at eighteen times the amount of the computed annual rent; and if it be land paying revenue to Government, but neither an entire muhal nor a specific portion with a defined jumma, at the estimated selling price.

The Western Court, on the 14th October, 1836, concurred in this construction.—Issued 28th October, 1836.

September 23d, 1836.

Extract of a Letter from the Judge of City Patna to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 30th August, 1836.

No. 1048.

A zillah judge incompetent to set aside a decision of a subordinate tribunal, in the absence of an appeal notwithstanding such decision may appear to him irregular or illegal.

Para. 1. I beg to be informed whether it is within the competency of a judge to set aside a decision passed by any of the inferior judicial authorities in a regular suit, when any irregularity or illegality in their proceedings may be brought to his notice by either party, or may transpire incidentally in the course of executing the decree, or in any other miscellaneous proceedings held subsequently thereto.

To the Judge of City Patna.

I am directed to inform you that you are not competent summarily to cancel the decisions of inferior tribunals on the ground of illegality or irregularity, but that you should direct the parties interested to appeal therefrom even although the prescribed period for such appeals should have elapsed.

The Western Court, on the 21st October, 1836, concurred in this construction.—Issued 4th November, 1836

September 30th, 1836

To the Officiating Commissioner of Circuit, 2d Division.

No 1049
1809
Reg XI Sec. 8

The Court have had before them your letter and its enclosures, No. 295, under date the 6th instant, respecting the provision of carriage for troops on the line of march and when otherwise required for the public service.

2. The following would appear to be the points on which you are desirous of obtaining the opinion of the Court:

First. Whether the latter part of Clause 1, Section 3, Regulation XI. of 1806 is to be considered as superseded by Regulation VI. of 1825;

Secondly. What description of carriage may be seized for the use of troops on the line of march; and

Thirdly. Whether in cases of emergency the officers of Government may seize carriage for the transport of rum or other supplies required for military purposes, or impress men for the department of public works.

3. In reply to your first question I am directed to communicate to you the opinion of the Court that the latter part of Clause 1, Section 3, Regulation XI. of 1806, has not been superseded by Regulation VI. of 1825, which, as observed by you, merely confers additional powers on the revenue authorities, leaving the provisions of the former enactment in regard to the assistance which the police officers are required to render when applied to in such cases, exactly as they were.

4. With respect to your second question I am directed to state, that as the authority vested in the public officers of Government by Clause 1, Section 3, Regulation XI. of 1806, for providing carriage for the use of troops in the line of march, is of a general nature, while the restrictions contained in Section 8 of that Regulation apply only to officers not commanding nor proceeding with a corps or detachment of troops, or any other person travelling within any part of the Company's territories either on the public service or his private affairs, the Court are of opinion that, under the provisions of the Clause of the Section first quoted, every description of carriage of the nature therein referred to, whether kept for *private use* or for hire, is liable to be seized for the purpose above mentioned, with the exception to begaries, coolies, &c. the compulsory exaction of whose services is expressly prohibited by Regulation III. of 1820.

5. On your third question I am desired to communicate to you the opinion of the Court in the negative on both points involved therein, provided of course, as regards the former, that the supplies alluded to are not proceeding with a body of troops and required for their use on the line of march.

September 30th, 1836.

To the Register of the Nizamut Adawlut, Western Provinces, dated 11th November, 1836.

I am directed by the Presidency Court to acknowledge the receipt of your letter of the 30th September last, No. 665, enclosing copies of letter from the officiating commissioner of circuit for the 2d division, under date the 6th September, No. 295, and of a reply to the same which the Western Court propose to transmit with the concurrence of this Court.

1049—1051.

30 Sept. } 1836
10 Oct. }

2. In reply, I am directed to state that the Court entirely concur in the construction which the Western Court propose to adopt in answer to the first and third questions which arise out of the officiating commissioner's letter. As to the second answer the Court concur in regard to the liability of carriage kept for private use to seizure for the public service; but they would have it distinctly understood that carriage kept for hire should be invariably taken in the first instance, while that kept for private use should only be pressed on very emergent occasions.

From the Judge of Zillah Rajshahye to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 30th June, 1836.

No. 1050.
Sale of property by moonsiffs in execution of decrees.

It having been brought to my notice, that the practice of executing decrees for small amount, by sale of personal property through the moonsiffs, is attended with considerable inconvenience to the courts, by obliging those officers to absent themselves from their sudder station (for many days on some occasions), thereby putting a stop to business of greater importance, and at the same time forcing them to incur an expense which the trifling fee of one anna in the rupee cannot possibly repay, I beg to submit the expediency of allowing the moonsiffs to entertain, each, an individual on their establishment, whose name shall be registered and for whose conduct the nominating officer shall be held responsible, to preside at sales of real property to the amount of one hundred rupees; such individual to receive the commission hitherto drawn by the moonsiff under Regulation XXIII. 1814.

To the Judge of Zillah Rajshahye, dated 30th September, 1836.

I am directed by the Court to inform you that if in your letter of the 30th June last, No. 34, you allude to decrees passed at the sudder station, the difficulty alluded to by you might be surmounted by entrusting the duty of selling property, &c. to the nazir, his naib, or any other officer nominated by you for that purpose: and that if you allude to decrees passed by the moonsiffs themselves, they may depute any officer on their own establishment to sell the property of a debtor.

2. In cases however in which the moonsiffs may have been directed by the judge, or other superior officer, to perform this duty, the Court are of opinion that they cannot properly delegate it to another.*

The Western Court, on the 2d September, 1836, concurred in this construction.

September 30th, 1836.

To the Secretary to the Government of Bengal in the Judicial Department, dated 16th September, 1836.

No. 1051
1836
Act XI

I am directed by the Court to request that you will lay before the Right Hon'ble the Governor of Bengal the accompanying copy† of a letter from the Register of the Sudder Dewanny Adawlut for the Western Provinces, dated the 17th June last,

† Not printed.

* The above reference led to the circular order of the 13th January, 1837.

No 492 and to solicit the favor of your informing me whether it was intended by the provisions of Act XI of 1836, to render magistrates and other judicial functionaries liable to civil actions in the courts specified in the Act, for damages on account of alleged injuries committed in their official capacity

2 The majority of the Court hold it to have been intended to extend the jurisdiction of the native courts specified in the Act, over certain classes not previously amenable to their authorities, without altering or adding in any way to the subjects or matters originally within their legal cognizance, and consequently that suits of this nature will not lie against any public officers not rendered specially amenable to the courts. On the other hand it is contended that civil actions for damages against official persons, not being excluded by the Act from the cognizance of the native courts specified, and the individuals themselves being unreservedly made amenable to their jurisdiction, no legal ground could be assigned for the non admission of such suits.

From the Secretary to the Government of Bengal in the Judicial Department to the Register of the Sudder Dewanny Adawlut at the Presidency, dated 25th October, 1836.

In compliance with the request conveyed by your letter dated the 16th ultimo, and its enclosures, I am directed by the Right Hon'ble the Governor of Bengal to transmit, for the information of the Court of this Presidency and that of the North Western Provinces, the accompanying copy of a letter from the Secretary to the Government of India, under date the 10th instant, regarding the construction of Act XI of 1836.

To the Secretary to the Government of Bengal

I am directed by the Right Hon ble the Governor General in Council to acknowledge the receipt of your letter dated the 27th ultimo, with its enclosed reference from the Register to the Court of Sudder Dewanny Adawlut, as to the intent and meaning of Act XI of 1836.

2 In reply, I am desired to request that that Court may be apprised that the Act in question, in providing that no person shall by reason of place of birth or by reason of descent be exempted from the jurisdiction of certain courts, does not take away any exemption to which any person may be entitled by virtue of his office, and consequently that judicial functionaries who were not liable to civil actions in the courts specified in the Act for damages on account of alleged injuries committed in their official capacity before the passing of the Act, will not be liable now

Council Chamber, 10th October, 1836

From the Officiating Judge of Zillah Ghazeepore to the Officiating Register of the Sudder Dewanny Adawlut, Western Provinces, dated 5th October, 1836.

No 1032
1814
Reg XXVII Sec 31.

With reference to the sentence underlined in the following extract, Section 31, Regulation XXVII 1814, may I beg the favor of your obtaining the orders of the Court as to whether the filing of the juwab-dawaee only in a suit, without the completion of the

other requisite pleadings, is sufficient to entitle the respective pleaders to have the regular fees, or whether, under the precise wording of the English version, all the requisite pleadings must be filed before the pleaders can be entitled to half the fees.

Extract.—"If a suit shall be withdrawn or dismissed on default, *after all the requisite "pleadings shall have been filed in court*, the respective pleaders are to be entitled to one "half the fees which they would have received if judgment had been given in the cause."

To the Officiating Judge of Zillah Ghazeepore, dated 14th October, 1836.

The Court are of opinion that to entitle the respective pleaders of the parties in cases withdrawn or dismissed on default to one half the amount of the established fee, under the provisions of Section 31, Regulation XXVII. of 1814, it is necessary that the whole of the requisite pleadings should have been filed, and not merely the answer or juwab-dawee.

The Presidency Court, on the 11th November, 1836, *concurred in this construction.*

October 14th, 1836.

To the Commissioner of Circuit for the 18th Division.

No. 1053.
1819
Reg. VII Sec 6

The Court are of opinion that in the event of parties, against whom an award for arrears of wages to domestics passed under the provisions of Section 6, Regulation VII. 1819, may be given, not immediately paying the same, the magistrate should proceed to levy the amount by the distress and sale of the defendants' personal property.

The Western Court, on the 4th November, 1836, *concurred in this construction.—Issued 18th November*, 1836.

October 14th, 1836.

No. 1054.
1831
Reg V Sec 5.

On a reference from the judge of Beerbhoom, it was held by the two Sudder Courts concurrently, that Section 5, Regulation V. 1831, does not restrict moonsiffs from taking cognizance of claims to lakhiraj lands attached in execution of their own decrees.

Calcutta Court, 14th October, 1836; *Western Court, 4th November*, 1836.

From the Officiating Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 17th October, 1836.

No. 1055.
1831
Reg V. Sec. 28.

A question having arisen as to whether an appeal lies to the Court of Sudder Dewanny Adawlut from an original order, passed by a zillah or city judge in a matter connected with the execution of a decree of his court, confirming or reversing in appeal the decision of a sudder ameen or moonsiff, I am directed to request that you will submit the point for the consideration and opinion of the Calcutta Court.

2. In the case which gave rise to the present reference the judge, in affirming the decision of a moonsiff, omitted to provide in his decree for the payment of interest on the sum adjudged, and on the decree-holder subsequently applying to him, under the rule contained in the circular order of the 11th September, 1829, to have this omission supplied, he rejected his application; from this order the decree-holder has appealed to the Court, and the question now is whether his appeal can be entertained. The Court are of opinion that as the order objected to originated with the judge, and was not passed in appeal from an order of the lower court, they are competent to receive an appeal from it and either to reverse the judge's decision and direct the payment of interest to the party in whose favor the decree was passed, or to desire the judge to revise his decision and to pass a modified order in conformity to the circular order above cited. Previously however to adopting either of these measures they are desirous of learning the practice of the Calcutta Court in cases of this nature as well as their opinion upon the general question.

3. The Court are aware of the resolution adopted by the Calcutta Court under date the 13th December, 1833, in the case of Mihr Ban Sing and another, but they observe that the rule therein laid down is applicable only to interlocutory orders passed by the zillah and city judges in the hearing of appeals in which their decision may be final, as in the case referred to, and does not affect the present question.

October 17th, 1836.

To the Officiating Register of the Sudder Dewanny Adawlut, Western Provinces, dated 25th November, 1836.

I am directed by the Court to acknowledge the receipt of your letter of the 17th ultimo, No. 893.

2. In reply, the Court direct me to observe that it was ruled by the resolution of the 18th March last (communicated to you by my letter of the same date No. 692,) that a summary appeal will lie to the Court of Sudder Dewanny Adawlut from the decision of a zillah judge in appeal from the judgment of a sudder ameen or moonsiff, provided it should appear that the sudder ameen or moonsiff had decided a case in which he had no jurisdiction. On the same principle, the Court hold that it is competent to the Court to amend, on a summary appeal, any order which may be obviously illegal or contrary to any positive regulation or circular order, and this principle has been invariably acted upon in this Court for the last two years and a half.

3. In the case out of which this reference arose, the zillah judge appears to have acted in direct opposition to the circular order of the 11th September, 1829; and the Court are therefore of opinion that the Western Court, provided they are satisfied that there exist no valid grounds for refusing the interest, are competent to direct the judge to award the same, on execution of the decree, without subjecting the party to the expense and delay of a regular suit.

To the Officiating Judge of Dacca, dated 21st October, 1836.

No. 1056.
Distribution of assets among several decree holders.

I am directed by the Court to inform you that it has been ruled by both Courts of Sudder Dewanny Adawlut that all decrees, under which process of attachment has been issued, provided they are dated previous to distribution, entitle the holders to share in proportion to their claims, (exception being allowed in case of bona fide mortgages,) in preference to the claimants under decrees in which no such process has been issued.

2. The Court therefore direct me to request that you will in the first instance satisfy the demand of Bholanath Misser from the proceeds of the sale of the property of Raja Ram Deo, provided no other decrees exist under which process of attachment had been issued on the date on which you received the application of the judge of Tippera; should any surplus remain you will be pleased to remit it to the judge of Tippera in satisfaction of the demand of Sheo Pershad Sing.

The Western Court concurred in this construction.

October 21st, 1836.

Resolution of the Presidency Court of Sudder Dewanny Adawlut, under date the 11th November, 1836.

No. 1057.
1814
Reg. XXVI. Sec. 4.

Doubts have been entertained whether in a case in which the Court has rejected an application for a special appeal from the decision of the zillah judge in appeal from the original decision of a principal sudder ameen; or in a case in which the Court, under the power vested in them by Clause 2, Section 2, Regulation IX. 1831, have confirmed the original decision of a zillah judge; the last order of the Sudder Dewanny Adawlut, or the decision of the zillah judge, is to be considered as the judgment which is open to review under the provisions of Section 4, Regulation XXVI. of 1814.

2. The Court are of opinion that as in the first instance no appeal has been admitted from the judgment of the zillah judge, the judge may, under the circumstances stated in Clause 2, Section 4, Regulation XV. 1814, apply for permission to review his decision.

3. When, on the other hand, the Sudder Court has confirmed a decision under the provisions of Clause 2, Section 4, Regulation IX. 1831, the order is to all intents and purposes a judgment, open to review by it (the Sudder Court) only.

The Western Court, on the 25th November, 1836, *concurred in this construction.*

November 11th, 1836.

At a Court of Sudder Dewanny Adawlut for the North Western Provinces, held at Allahabad under date the 18th November, 1836—

No. 1058.
1814
Reg. XXVI. Sec. 4.

It was resolved, with the concurrence of the Calcutta Court of Sudder Dewanny Adawlut, that documents filed with applications for a review of judgment under the provisions of Section 4, Regulation XXVI. of 1814, should be considered as exhibits, and

18 Nov. } 1836.
2 Dec. }

made liable, as such, to the rule contained in Article 5, Schedule B, Regulation X. of 1829, in the same manner as if they had been filed or entered on the proceedings of the original suit, or when it was before the Court in appeal, whether regular or special.

The Presidency Court, on the 21st October, 1836, *concurred in this construction.*

November 18th, 1836.

From the Officiating Judge of Zillah Shahabad to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 17th August, 1836.

No. 1059.

Power of the civil courts summarily to set aside fraudulent leases in executing their decrees.

I have the honor to request the opinion of the Court of Sudder Dewanny Adawlut respecting the construction to be put on Section 4, Regulation XLIV. 1793, and further to be informed on the general practice adopted by the Court with respect to leases sought to be set aside on the transfer of landed property, whether the Court consider the enactment as bearing reference only to bona fide leases, or that it is imperative to uphold all leases entered into between the farmers and former proprietors till the period specified for their expiration.

2. The rule alluded to is taken advantage of in two ways to defeat the ends of justice. 1st. On an action being instituted for right and possession of real property, the defendant who is in possession gives a lease for a long period say twenty or thirty years at a rent just sufficient to pay the sudder jumma. The plaintiff on obtaining his decree is opposed on taking possession by the farmer and finds that he has got a decree for property, it may be, for the benefit of his posterity, but that he is himself excluded from its enjoyment with every prospect of being so for the term of his life, while the former incumbent, against whom the decree has been given, in collusion with the fictitious lessee is still enjoying the profit of the land to which the decision of the court says he has no right.

3. It is also resorted to by debtors to defraud their creditors. On an action being instituted for the recovery of monies the debtor gives a lease of his property in the manner above noticed; on execution being sued out against his property he laughs at his creditor for he has completely barred its purchase by any other party by the clog he has put upon it. It does not appear to me that such devices can possibly be supported by law, but the wording of the regulation it is hard to get over. As it is, the difficulties encountered in the execution of decrees are manifold; and if this rule is to be construed as applicable to all leases without exception, those difficulties must be increased tenfold.

4. Should it be the opinion of the Court that such fraudulent leases cannot be upheld they are of course to be set aside summarily,—in the first instance mentioned by me, by permitting the decree-holder, in the second, the purchaser to collect from the cultivating tenants.

To the Officiating Judge of Zillah Shahabad, dated 2d December, 1836.

I am directed by the Court to inform you that Section 4, Regulation XLIV. 1793 is rescinded by Regulation XVIII. 1812, but that under the circumstances stated by you

you are authorised in cases of execution of decrees, after holding a summary investigation into the claims of the parties concerned, to quash any lease which may be satisfactorily shewn to be fraudulent, leaving the party dissatisfied with your decision to appeal summarily to this Court, or institute a regular suit to recover possession of their alleged rights.

December 2d, 1836.

Extract of a Letter from the Session Judge of Zillah Bundelkhund to the Officiating Register of the Sudder Nizamut Adawlut, dated 30th November, 1836.

No. 1060.

A magistrate is incompetent to interfere in disputes between parents respecting the guardianship of a child.

Para. 1. I have the honor to submit herewith, for the orders of the Sudder Nizamut Adawlut, copy of a letter from the officiating magistrate of Banda with its enclosure.

Extract of a Letter from the Acting Magistrate of Zillah Banda to the Session Judge of Zillah Bundelkhund, dated 3d November, 1836.

Petition of Musst. Mungree.

Reply to the same by Mr. Pollock.

Para. 1. I have the honor to forward certain papers mentioned in the margin, with a request that you will have the goodness to submit them with a copy of this communication for the orders of the Sudder Nizamut Adawlut.

2. The complainant in the case is a woman of the Hindoo faith, who cohabited with the defendant for five years, by whom she had a female child about two years since, which she claims possession of. The defendant, of the Christian persuasion, it appears, having recently married, has dismissed the complainant with a maintenance of four rupees a month and a house for life, and refuses to resign the guardianship of the child, which is at present in his possession.

To the Session Judge of Zillah Bundelkhund.

Musst. Mungree Petitioner.

The Court having again had before them your letter No. 151, under date the 30th ultimo, with its enclosures, from the acting magistrate of Banda, in the case of the petitioner named in the margin, direct me to acquaint you, for the information and guidance of that officer, that he has no authority to interfere with a view to make over the child in question to the petitioner, who should be referred to the civil court.

The Presidency Court concurred in this construction.

December 9th, 1836.

To the Officiating Register of the Nizamut Adawlut, Western Provinces, dated 9th December, 1836.

No. 1061.

1817.

Reg. XVII. Sec. 10.

I am directed by the Court to request that you will lay before the Court of Nizamut Adawlut for the Western Provinces, the accompanying copy of a letter from the officiating session judge of Cuttack, dated the 3rd ultimo, No. 32.

The Court propose, should the Western Court concur, with reference to the 16th paragraph of the officiating session judge's letter, to inform him that "measurement

papers" must be considered as coming within the denomination of "deeds and papers," the fraudulently publishing as true, or otherwise fraudulently giving or attempting to give effect to which, knowing the same to be false and fabricated, is declared by Section 10, Regulation XVII. of 1817, to subject the offender on conviction to the penalties prescribed by that section for forgery.

The Western Court, on the 23d December, 1836, concurred in this construction.

December 9th, 1836.

From the Officiating Judge of Zillah Chittagong to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 23rd November, 1836.

No. 1062. 1806. Reg. II. Sec. 11.

I beg leave to submit copy of my proceedings of to-day's date, together with copies of a petition and list of property and deposition on oath of the petitioner, a debtor imprisoned under a decree of the Sudder Dewanny Adawlut.

2. The petitioner moves for release under Section 11, Regulation II. 1806, and is not opposed by the holder of the decree; the judgment appertains to and the execution of the decree is under orders of the Sudder Dewanny Adawlut; I doubt my powers to release the petitioner, and therefore submit this reference for the Court's final orders. And for my future guidance in similar cases, I request to know if I can release, as judge of a zillah court, a man confined in execution of a decree of the Sudder Dewanny Adawlut without the special orders of the Sudder.

To the Officiating Judge of Zillah Chittagong.

I am directed to communicate to you the Court's opinion that when the execution of a decree of the Sudder Dewanny Adawlut has been entrusted to the zillah judge, he is competent, without referring the case to the Court, to apply the rule contained in Section 11, Regulation II. 1806, to any defendant who may be confined in execution of the decree.

The Western Court, on the 30th December, 1836, concurred in this construction.—Issued 27th January, 1837.

December 16th, 1836.

From the Judge of Zillah Bundlekhund to the Officiating Register of the Western Provinces, dated 17th December, 1836.

No. 1063. 1814 Reg. XXVIII. Sec. 8.

The practice of this Court has heretofore been to admit the records of hajirzaminee, in pauper cases, on country unstamped paper, but these records not being specified in Section 8, Regulation XXVIII. 1814, as exempted from stamp duties, it appears to me to be irregular, and I have to request the favour of a communication of the orders of the Sudder Dewanny Adawlut on the subject.

From the Officiating Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 23rd December, 1836.

I am directed by the Court to request that you will submit, for the opinion of the Calcutta Court, the accompanying copy of a letter from the judge of Bundelkhund, under date the 17th instant.

2. There being no exemption in favor of security bonds of the description of those referred to by Mr. Fraser, the Court propose, with the concurrence of the Calcutta Court, to inform him that the practice which obtains in his district of admitting such instruments on plain paper is opposed to the Regulations, and should be discontinued accordingly.

The Presidency Court concurred in this construction.

December 23rd, 1836.

From the Officiating Judge of Zillah Meerut to the Register of the Court of Sudder Dewanny Adawlut for the Western Provinces, dated 28th December, 1836.

No. 1064.
1836.
Act XVII.
Trial of causes instituted in the courts in the territories lately held by the Begum Sumroo.

I have the honor to solicit the instructions of the Sudder Dewanny Adawlut on the following points connected with the investigation of civil suits in the territories which were lately held by the Begum Sumroo.

2. Many of the tumusooks and other description of bonds, agreements, &c. are written on plain paper, and some on common paper, bearing an ink stamp of a certain value from which a revenue was collected by the Begum, but under what regulations these stamps were issued and used, I am not informed. I request to know whether those documents may be received in support of claims, and to submit herewith three of the stampt papers of different value for the inspection of the Court.

3. With reference to Act XVII. of 1836, regarding the administration of justice in the territories of the late Begum, I beg to know whether the unexecuted decrees which were passed previous to the death of the Begum are to be carried into execution by our courts. On one of the stampt papers herewith submitted is written a decree by an officer of the Begum.

4. As there were no usury laws in the Begum's territories, many of the tumusooks and other agreements for the payment of money contain an acknowledgment of payment of interest at the rate of two, three or more rupees per cent per mensem. What is to be determined regarding the payment of interest beyond the legal amount authorized in our territories?

5. It will doubtless be necessary to ascertain what description of officers were authorized to issue decrees in civil suits in the territories of the late Begum, and also under what processes they were ordered to be used.

To the Officiating Judge of Meerut, dated 6th January, 1837.

The Court having again had before them your letter, No. 190, under date the 28th ultimo, direct me to communicate to you their opinion, as follows on the several points

therein referred, connected with the investigation of civil suits which may have originated in the territories held by the late Begum Sumroo.

2. On the first and third points I am desired to inform you, that the provisions of the stamp and usury laws are inapplicable to deeds executed within the territories of the Begum Sumroo prior to the date on which they were annexed to the British dominions; and in the decision, therefore, of cases which may involve claims of the nature of those described in the fourth paragraph of your letter, you must be guided by the laws and usage of the country.

3. With respect to the second point referred by you, the Court direct me to observe that your court must be considered as standing in the place of the local courts which existed under the Begum's government, and that on application being made to you in the prescribed form for the execution of any decrees passed by the Begum's officers prior to her highness's demise, you should proceed to enforce the same under the general rules applicable to the execution of decrees of court, which will of, course include an investigation into any objections which the opposite party may have to offer to such awards, on the plea of their not having been passed by a competent tribunal, or on any other ground.

The Presidency Court, on the 27th January, 1837, concurred in this construction.

January 6th, 1837.

To the Register of the Court of Nizamut Adawlut, Western Provinces, dated 16th December, 1836.

No. 1065.

A commissioner of circuit has no power to declare any person excluded from future employ in his division.

On the conclusion of an investigation into the conduct of the nazir of the Foujdary Court of a district in the Lower Provinces, the commissioner, considering the nazir, though acquitted of the charges preferred, to be a corrupt officer, directed that he should not be employed in any situation in the offices of the magistrates subordinate to his jurisdiction.

2. The Court are inclined to hold that the commissioner has no power to declare the individual in question perpetually excluded from future employ in his division, although he is of course competent to decline sanctioning his nomination to any responsible situation during the period he may be in charge of the division. As the point is however of importance, they request to be favored with the opinion of the judges of the Western Court on the subject.

From the Officiating Register of the Western Provinces to the Register of the Presidency Court of Nizamut Adawlut, dated 6th January, 1837.

I am directed to acknowledge the receipt of your letter, No. 2980, under date the 16th ultimo.

2. In reply, I am directed to state that the Court concur in opinion with the Calcutta Court that, in the case which forms the subject of your letter, the commissioner was not

competent to declare the individual referred to disqualified for further employment in his division, and to add that the Court have invariably acted on this principle whenever any cases of the above nature have been brought before them.

January 6th, 1837.

From the Officiating Register, Western Provinces, to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 13th January, 1837.

No. 1066.

Execution of decrees passed by His Majesty in council.

With reference to the orders lately received from the honorable the Court of Directors, forwarding copies of the judgments passed by His Majesty in council in several cases of appeal from the decisions of the Sudder Dewanny Adawlut, I am directed by the Court to request that the Calcutta Court will do them the favor of stating what may be the practice of that Court in regard to the execution of such decisions; viz. whether it has been usual for the Court to execute the decrees themselves, including the determination of any objections which may arise in the course of the execution, or to forward the decrees to the judges of the districts in which the cause of action arose, with an order generally to carry the same into effect in the same manner and under the same rules as prescribed for the execution of decrees of court, leaving any party, dissatisfied with their proceedings or orders, to appeal therefrom in the usual form.

2. I am further directed to request the opinion of the Calcutta Court as to the competency of the Courts of Sudder Dewanny Adawlut to award wasilaut or interest to the holder of a decree passed by the king in council for money or landed property, where the decree may contain no provision for the payment of the same. The case which has given rise to this question, is that of Lal Dhokul Singh, appellant, versus Lal Rooder Pertaub Singh, respondent, a full report of which is given at page 253, volume I. of the Sudder Dewanny Reports.

3. Under the decree passed in that case by the Court of Appeal at Benares, setting aside the decision of the zillah court which dismissed the claim, the plaintiff obtained possession of the talooka in dispute, and continued to hold it for two years, when he was dispossessed by order of the Sudder Dewanny Adawlut, who reversed the decision of the Benares Court, and directed that the plaintiff should refund the mesne profits for the period of his possession.

4. Lal Dhokul Singh, son and successor of the original plaintiff, being dissatisfied with this decision, appealed from it to the king in council, and a final decree was passed by His Majesty under date the 7th February, 1835, a copy of which is annexed, reversing the decision of the Sudder Dewanny Adawlut and affirming that of the Provincial Court, but without giving any order as to the payment of mesne profits or the costs of the Sudder Court.

5. Adverting, however, to the terms of His Majesty's decision, the Court are of opinion that it must be presumed to be the intention of it that the parties should be placed in precisely the situation in which they would have been but for the decree of the

Sudder Dewanny Adawlut, and that consequently the decree-boldor is entitled, upon the principle laid down in the circular order of the 11th September, 1829, to receive from the respondent, without a fresh suit, the amount with interest of the mesne profits refunded by him by order of the Sudder Court, as well as for the whole period of his subsequent dispossession, together with the costs of the appeal to the Sudder Dewanny Adawlut, and that the Court, in the execution of the present decree, are competent to award him the same.

6. Should the Calcutta Court concur in this opinion the Court propose to act upon it in the instance under consideration, as well as in all future cases of a similar nature.

January 13th, 1837.

To the Register of the Court of Sudder Dewanny Adawlut for the Western Provinces, dated 17th February, 1837.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter dated 13th of January last, in which, at the requisition of the Sudder Dewanny Adawlut for the Western Provinces, you solicit information from them regarding their manner of proceeding to execute decrees passed by His Majesty in council, with its enclosures.

2. In reply, I am instructed to state, that it has been usual to forward the decrees in question to the judges of the districts in which the cause of action may have arisen, with an order, generally to carry the same into effect, in the same manner, and under the same rules, as those prescribed for the execution of other decrees of court, leaving any party, dissatisfied with their proceedings or orders, to appeal therefrom in the usual form.

3. I am further directed to state that the Court entirely concur in the opinion expressed in the fifth paragraph of your letter, regarding the adjudication of costs and mesne profits.

No. 1067.

1819. Reg. II. Sec. 30.

On a reference from the judge of Chittagong, the Courts of Sudder Dewanny Adawlut held that a suit brought by a zemeendar for the rent of lands in which the defendant claims the right of property in virtue of a rent-free grant, is not referrible to the collector under the provisions of Section 30, Regulation II. 1819, but must be considered in the light of a boundary dispute, and disposed of in the ordinary mode by the civil court.

Calcutta Court, 30th December, 1836—*Western Court, 13th January*, 1837.

No. 1068.

1829 Reg. X. Schedule B.

The sicca rupee to be taken as the standard for estimating the powers of the native judges in the investigation of regular suits, until altered by an Act of the Government.

From the Officiating Judge of Zillah Shahabad to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 27th December, 1836.

I have the honor to request the opinion of the Court of Sudder Dewanny Adawlut on the following points:

Amount of action in sicca rupees 4,646, company's rupees 5,254: must the plaint be written on paper of 150 or 250 rupees' value?

2. I take this opportunity of requesting the opinion of the Court whether, in calculating the power of moonsiffs and the native judges in the investigation of regular suits, the amount of action cognizable by each is to be calculated in sicca or company's rupees.

To the Officiating Judge of Zillah Shahabad.

I am directed by the Court to inform you that under the circumstances stated in the first query contained in your letter of the 27th December last, No. 412, the plaint must be written on a stamp value 150 rupees, and further that the sicca rupee must be taken as the standard coin for estimating the powers of moonsiffs and other native judges in the investigation of regular suits until altered by some Act of the Government.

The Western Court, on the 3rd February, 1837, concurred in this construction.—Letter to the Officiating Judge issued 17th February, 1837.

January 20th, 1837.

From the Officiating Judge of Zillah Chittagong to the Register of the Court of Sudder Dewanny and Nizamut Adawlut, Fort William, dated 14th November, 1836.

No. 1069.
1814
Reg XXIII.
Sec. 10, Cl. 2.

I beg leave to transmit the copy of a letter received by me from the commissioner of this division regarding the case of Alleemoodeen, moonsiff of Sittakoond; and for the object of a precedent I submit a reference for the orders of the superior Court.

2. The moonsiff was made over by me to the court of circuit under the following charges:

1*st*. Abstracting from the nuthee of a suit in which Ribbeeah Beebee was plaintiff, a chittee dated 15th Assin, 1195, and an ikrar dated in Sawun, 1185.

2*nd*. Fabricating in the above case a roobukaree, 3d March 1834, and the second furd of the deposition of Rammanick, 23d April, 1835, and the second furd of the draft of the final decision, 24th December, 1835, both dates of crime included within the period 3d of March, 1835, to 19th January, 1836.

3. Mr. Dampier has not adverted to the charge of forgery; but this does not alter the doubt that may arise, and which requires removal, that is, if a moonsiff in a civil case is found by the judge guilty of fabricating papers, and at the same time of official misconduct, how is the judge to proceed to commit, for both charges as in cases of forgery? or as the commissioner suggests to make the moonsiff over to the magistrate?

4. Again under Clause 2, Section 10, Regulation XXIII. 1814, what course is a judge to take? first of all he is to satisfy himself of the necessity of a criminal prosecution, but whether he is to commit the moonsiff to the court of circuit, or direct the vakeel of Government to petition the magistrate? on either course the clause is silent. May I solicit the orders of the Nizamut Adawlut on these points for future guidance?

To the Officiating Judge of Zillah Chittagong, dated 27th January, 1837.

I am directed to communicate to you, in reply to your letter of the 14th November last, the opinion of the Court, that after you had enquired into the alleged misdemeanors

and other criminal acts, charged against the moonsiff, you ought, provided you saw reason to believe that the charges were well founded, (vide Section 10, Regulation XXIII. of 1814) to have made over the case to the magistrate, to be disposed of according to law directing the Government pleader to prosecute on the part of Government.

The Western Court concurred in this construction.

January 27th, 1837.

To the Judge of Zillah Mymensingh.

No. 1070.

Mode of proceeding when records of the civil courts are required by officers in the resumption department.

I am directed to communicate to you, in reply to your letter of the 26th December last, the opinion of the Court that you ought not, in ordinary cases, to furnish the officers employed in the resumption department with the original records of your court, but that you should inform the special commissioner and deputy collector, that you will furnish them with copies of any papers that they may require, on their authorizing you to defray the expence of transcribing them. Should an inspection of the original record, or any papers filed therein, be indispensably necessary, you will then, previous to forwarding the same, retain an attested copy, the expence of making which must be defrayed by the revenue authorities.

The Western Court, on the 10th February, 1837, *concurred in this construction.—Letter to the Judge of Mymensingh issued 24th February*, 1837.

January 27th, 1837.

From the Officiating Register of the Western Provinces to the Register of the Presidency Court of Nizamut Adawlut, dated 3d February, 1837.

No. 1071.

Power of a session judge or commissioner, in his appellate capacity, to call for an English report from a magistrate.

I am directed to request that you will submit, for the consideration of the Calcutta Court, the accompanying copies of a letter and its enclosures from the officiating session judge of Furruckabad, under date the 3d ultimo, requesting the opinion of the Court as to whether a session judge or a commissioner has a right, in his appellate capacity, to call for an English report from a magistrate.

In ordinary cases where an appeal may be lodged against an act of a magistrate or joint magistrate the Court are of opinion, that the commissioner of circuit or session judge, according as the appeal may lie to the one or the other, should confine himself to calling for the proceedings in the case, or for a Persian kyfeeut or report if such should appear necessary; but that in special cases those officers must be considered fully competent, in their general capacity of controlling authorities, to require a report in English on any particular points which may appear to call for explanation, especially in regard to any irregularities or other defects apparent in the magistrate's proceedings, with a view to their bringing the same to the notice of the Court or Government, should the circumstances of the case seem to render that measure necessary or proper.

The Presidency Court, on the 3d March, 1837, *concurred in this construction.*

February 3d, 1837.

Extract of a Letter from the Officiating Register of the Western Provinces to the Register of the Presidency Court of Nizumut Adawlut, dated 3d February, 1837.

No. 1072.

A magistrate cannot compel a landholder to repair the public roads passing through his estate.

Para. 1. I am directed by the Court to request that you will submit, for the consideration of the Calcutta Court, the accompanying copies of a letter from the officiating commissioner of the second division under date the 24th ultimo, and of its enclosure, from the magistrate of zillah Agra.

2. The Court propose, with the concurrence of the Calcutta Court, to inform the latter officer that they are not aware of any Regulation which authorizes a magistrate to compel a zemeendar or other landholder to repair the public roads passing through his village or estate.

The Presidency Court, on the 3d March, 1837, concurred in this construction.

From the Officiating Judge of Zillah Shahabad to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 5th January, 1837.

Domun Singh *versus* Girdharee Loll.

No. 1073.

Where a suit is sent back for re-trial, unless the order specially restricts the enquiry to any particular point or points, the whole case must be considered as re-opened.

I have the honor to transmit herewith a copy of a proceeding of the Court of Sudder Dewanny Adawlut, in the above case, dated 29th August last, with respect to which I beg to be favored with the orders of the Court as to whether in such cases I am required to investigate only the points, and to take the particular evidence to those points, indicated by the Court's order, or whether I am at liberty to enter into a further investigation of the entire merits of the case and take evidence not indicated by the superior Court.

2. The vakeel of the appellant in the superior Court stated that a pedigree pleaded by him could be proved by two witnesses whose evidence I had omitted to take: at the time he made this statement one of the witnesses (a party to this case in the principal sudder ameen's court) was dead, the other was a plaintiff in another suit against the same defendant on the very same ground; the pleader in this Court consequently demurs to calling him, and gives no other evidence to prove the pedigree as he is permitted to do by the Court, but offers oral testimony to prove a point to which I am directed by the superior Court to take documentary evidence mentioned in their proceeding. I beg to be apprised whether it is allowable for me to receive evidence at variance with that, the non-receipt of which formed the ground of the annulment of the orders of this court.

To the Officiating Judge of Zillah Shahabad.

I am directed to inform you, in reply to your letter of the 5th January last, that when a suit is sent back for re-trial, unless the order specially restrict the enquiry to any particular point or points, the whole case must be considered as re-opened.

The Western Court, on the 24th February, 1837, concurred in this construction.—Letter to the Officiating Judge issued 10th March, 1837.

February 10th, 1837.

From the Session Judge of Zillah Shahabad to the Register of the Presidency Court of Nizamut Adawlut, dated 29th December, 1836.

No. 1074. 1836 Act XXX.

I have the honor to request the favor of your obtaining for me the opinion of the Court of Nizamut Adawlut respecting the construction to be put on Act XXX. 1836, whether under that enactment a session judge is required to dispense with futwas on trials of persons charged with *specific* acts of murder and thuggee.

To the Session Judge of Zillah Shahabad, dated 10th February, 1837.

I am directed to communicate to you the opinion of the Court that the provisions of Act XXX. of 1836, do not authorize a session judge to dispense with a futwa on the trial of a prisoner charged with specific acts of murder and thuggee, unless the prisoner be tried under the provisions of Regulation VI. of 1832.

The Western Court, on the 27th January, 1837, *concurred in this construction.*

February 10th, 1837.

From the Officiating Judge of Zillah Shahabad to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 12th November, 1836.

No. 1075. 1822. Reg. XI. Sec. 38.

I have the honor to request that you will obtain for me the opinion of the Court of Sudder Dewanny whether, if the collector is sued, together with others, for an act done by him under an order of court, the case must necessarily be nonsuited under the wording of Section 38, Regulation XI. 1822, or is it sufficient that the collector's name be struck out of the list of defendants, and the case be allowed to proceed against the other defendants?

To the Officiating Judge of Zillah Shahabad, dated 21st February, 1837.

I am directed to communicate to you the opinion of the Court, that in suits of the nature of those referred to by the late officiating judge, in his letter of the 12th November last, No. 339, on the case being first brought up for a hearing, under the rule contained in Section 10, Regulation XXVI. of 1814, it should be pointed out to the plaintiff or his vakeel, that he had rendered himself liable to be nonsuited, for improperly making the collector a defendant in his official capacity; and if he should plead that he had done so from inadvertence, and it should appear to the satisfaction of the court that the act was not wilful, and had not proceeded from any fraudulent or other improper motive, he should be allowed to file a supplemental plaint, withdrawing his claim against the collector as a Government officer; when it would be competent to the judge to proceed with the suit against the other defendants, and either to dispose of the case himself, or to refer it to any of the subordinate judicial functionaries, by whom, from its amount, it might be cognizable under the general rules in force.

The Western Court, on the 13th January, 1837, *concurred in this construction.*

February 21st, 1837.

2d Feb. } 1837.
10 March, }

Extract of a Letter from the Judge of Zillah Tirhoot to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 28th December, 1836.

No. 1076. 1819. Reg. II. Sec. 30, Cl. 7, 8.

Para. 1. Doubts have occurred to me as to the construction to be given to Clause 8, Section 30, Regulation II. of 1819, and I therefore solicit the solution of them, through you, from the Court of Sudder Dewanny Adawlut.

2. In the first place, what is meant by the words "and shall proceed to investigate and decide on the case in like manner as if it had been *instituted* in the court?" for cases originally instituted in court are regular suits, not appeals.

3. If it is intended to mean that they are to be proceeded in as regular appeals, I would enquire, whether in that case the rules of practice in appeals under Clause 3, Section 16 of Regulation V. of 1831 shall apply? or the old rules for regular appeals? because no allusion is made to appeals under Clause 8, of Section 30 of Regulation II. of 1819, in Regulation V. of 1831, and therefore not being rescinded the rules formerly obtaining, regarding all regular appeals, may be held to be still binding in those appeal cases under Regulation II. of 1819, and in that case process must be served on respondent, and security tendered for eventual costs with the petition of appeal.

4. In this court appeal cases of this nature appear to have been considered in some degree to come under Regulation V. of 1831, and have been taken up in the first instance with a view to ascertain whether an appeal ought to lie without serving process on the respondent.

To the Judge of Zillah Tirhoot, dated 24th February, 1837.

I am directed to inform you that the provisions of Clause 3, Section 16, Regulation V. 1831 are applicable only to appeals from the decisions of moonsiffs, sudder ameens and principal sudder ameens: appeals from the decisions of collectors under Clause 7, Section 30, Regulation II. 1819, must therefore be taken up and tried under the rules in force prior to the enactment of the clause first cited.

The Western Court, on the 10th February, 1837, concurred in this construction.

February 24th, 1837.

From the Judge of Zillah Ghazeepore to the Officiating Register of the Western Provinces, dated 28th February, 1837.

No. 1077. 1808. Reg. XIII. Sec. 11, Cl. 2.

The construction of Clause 2, Section 11, Regulation XIII. 1808, contained in the Court of Sudder Dewanny Adawlut's order (paragraph 2) dated 12th September, 1811, No. 90 of the printed construction book, would appear to imply a discretion in the zillah court, somewhat at variance with the modified rules laid down in the provisions of Section 11, Regulation XIII. 1808, namely, that of staying the execution of its own decrees for real property, in case the appellant (being in possession) should have regularly preferred his appeal, and tendered to the zillah court proper security, and moved it

to suspend execution until the orders of the superior Court be received; whereas under the spirit of the last quoted enactment, the admission of such motions on the part of the appellant, under any circumstance whatever, has virtually ceased to exist. I request therefore to be favored with the Court's instructions, whether it is competent to this tribunal or the subordinate courts to entertain any motion of the above description without the previous issue of an order to that effect from the appellate Court or otherwise.

2. With reference to the Court's further construction of the same Clause under date the 1st January, 1830, paragraph 2, No. 536 of the printed construction book, taken in connection with the rule passed in the latter part of Clause 3, Section 16, Regulation V. 1831, for enabling the respondent to take *immediate* measures for the execution of the decree confirmed in appeal, I wish to be informed, whether it is imperative on the courts, in all cases where the Regulations allow a second or special appeal, to demand from the decree-holder security to abide the ultimate award, in the event of his wishing to obtain possession under the decree within the period allowed for the appeal. A practice the reverse of this has hitherto prevailed in this district.

From the Officiating Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 10th March, 1837.

I am directed by the Court to request that you will submit, for the consideration of the Calcutta Court, the accompanying copy of a letter from the judge of zillah Ghazeepore, under date the 28th ultimo, involving a construction of Clause 2, Section 11, Regulation XIII. of 1808.

2. With regard to the first point noticed by Mr. Smith, the Court observe, that the construction adverted to in his letter (No. 90 of the construction book) had reference merely to the power vested in the appellate tribunals of restoring an appellant to possession after it had been given to respondent by the lower court; though, as noticed by Mr. Smith, it incidentally implies a discretion on the part of the lower court to delay for a reasonable period the execution of its own order for giving possession to the respondent in case of an appeal, until the receipt of instructions from the appellate Court; and the Court do not see any thing in the clause under consideration which would preclude the exercise of a sound discretion in particular cases, which may appear to require it.

3. The Court remark that the second point referred by Mr. Smith, has already been provided for in the letter to the address of the judge of Cawnpore dated 1st January, 1830, No. 536 of the construction book, and they are of opinion that the rule therein laid down, which they do not consider to have been superseded by Clause 3, Section 16, Regulation V. of 1831, or any subsequent enactment, should continue to be observed.

The Presidency Court, on the 25th March, 1837, concurred in this construction.

March 10th, 1837.

1078—1079.
10 March, 1837.

From the Judge of Zillah Tirhoot to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 11th February, 1837.

No. 1078.
Circular order, N° 107, Vol. 2d, 13th January, 1837.

I have the honour to acknowledge the Court's circular of the 13th ultimo, directing the discontinuance of the obtaining practice of employing moonsiffs to conduct investigations under Sections 50, 51, 52, 53 and 54 of Regulation XXIII. of 1814.

2. With reference to the 5th clause of the 4th paragraph of the above order, I beg to be informed how and from whom the zillah courts shall levy for the ameens the fee of one anna in the rupee, in cases of investigations into sufficiency of securities tendered to the Court of Sudder Dewanny or other zillahs, and in cases of paupers, and in cases of enquiries directed by judges of other zillahs?

3. It is my intention to endeavor to obtain the aid of the central cauzies of each moonsiffship to carry into effect the order now issued, as it appears to me they would have more local experience and would therefore be better able to afford efficient aid.

GENERAL SECRETARIAT LIBRARY

To the Judge of Zillah Tirhoot.

I am directed to inform you that no fees can be levied for the remuneration of the ameen appointed under the circular order of the 13th January last, No. 217, in cases in which he may be employed in investigating the sufficiency of securities tendered to the Court of Sudder Dewanny Adawlut or other zillahs, and the circumstances of parties wishing to sue *in formâ pauperis*. Should you therefore consider it objectionable to employ, on these duties, persons who do not receive any fees, you are at liberty, as heretofore, to confide this duty to your nazir or to the moonsiffs.

2. In regard to enquiries directed by the judges of other districts, the Court direct me to observe that whether any fees can be levied or not, must depend upon the nature of the enquiry.

The Western Court, on the 31st March, 1837, concurred in this construction.

March 10th, 1837.

From the Secretary to the Government of Bengal to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 24th January, 1837.

No. 1079.
1819.
Reg. II. Sec. 12

Letter from Secretary Sudder Board of Revenue, with enclosures, dated 20th August, 1836.
To ditto in reply dated 30th ditto.
From ditto, with enclosures, dated 2d January, 1837.

I am directed by the Right Honorable the Governor of Bengal to transmit to you in original the correspondence specified in the margin, and to request the opinion of the Court regarding the construction of Section 13, Regulation II. of 1819, in cases where the final decision may be in favour of the right of Government to assess the lands attached, and also where the lands may be eventually decreed not liable to assessment.

To the Secretary to the Government of Bengal, dated 10th March, 1837.

I am directed by the Court to acknowledge the receipt of your letter of the 24th January last, No. 123, and its enclosures, and, in reply, to forward the accompanying

copies of minutes* recorded on the subject thereof by the Judges of the Court, from which the Right Honorable the Governor of Bengal will perceive that the majority of the Court are of opinion that if the attached lands be finally adjudged liable to assessment, Government are entitled to the mesne profits during the attachment, while on the other hand, if the lands be declared exempt from public assessment, the proprietors have a just claim against Government for the mesne profits which accrued while the lands were under the charge of the revenue authorities.

March 10th, 1837.

From the Assistant in Charge of the Office of the Judge of Sylhet to the Register of the Presidency Court of Sudder Dewanny and Nizamut Adawlut, dated 7th February, 1837.

No. 1080.

Civ. circular order, No 131, Vol 24, 6th February, 1835.

I request to know whether an assistant in charge is competent to try and punish cases of resistance to processes in giving possession of lands bought at the public sale.

2. Though not exactly a current duty of the office as specified in the Sudder Dewanny circular of the 6th February, 1835, No. 131, I am induced to ask for permission, as otherwise great delay will arise in giving possession, and the unfortunate purchasers, without having any benefit from their purchase, are called upon to pay the rents as if they were in full enjoyment of the estate.

To the Assistant in Charge of the Office of the Judge of Sylhet.

I am directed to communicate to you the opinion of the Court that an assistant in charge of the office of civil judge may summon parties charged with resistance of civil process, and examine the witnesses for and against the prosecution, and, if he consider the charge proved, hold the offenders to bail until the arrival of the judge, who, under the provisions of Section 3, Regulation IX. 1798, must pass the final order.

The Western Court, on the 31st March, 1837, *concurred in this construction.—Letter to the Assistant issued 21st April*, 1837.

March 16th, 1837.

From the Session Judge of Zillah Bundelkund to the Officiating Register of the Western Provinces, dated 4th March, 1837.

No. 1081.

It is not required by any law, that an appeal from the order of a magistrate should be accompanied by a copy of the proceeding or decision appealed against.

It has heretofore been the practice to receive appeals from the orders of the magistrate subordinate to this court without requiring the appellant to produce a copy of the magistrate's orders; but as I have doubts whether I am at liberty to dispense with the latter, I shall feel obliged by a communication of the Court's orders on the subject.

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* It has not been considered necessary to print the minutes.

From the Officiating Register, Western Provinces, to the Register of the Presidency Court of Nizamut Adawlut, dated 17th March, 1837.

I am directed by the Court to request that you will submit, for the consideration of the Calcutta Court, the accompanying copy of a letter from the session judge of Bundelkund under date the 4th instant.

With regard to the question involved in Mr. Fraser's reference, the Court direct me to state that they are not aware of any Regulation, which requires that an appeal from the order of a magistrate or joint magistrate should be accompanied by a copy of the proceeding or decision appealed against. It might, the Court remark, be inferred from the terms of Section 5, Regulation III. of 1821, which, in limiting the period of appeal from such orders to one month, provides that the time shall be calculated upon the principles of the rules contained in Clause 10, Section 6, Regulation XXVI. of 1814, that it was intended that appeals in criminal matters should be accompanied by a copy of the order appealed against equally as in civil; but the Court are of opinion that the rule just cited is applicable to those cases only in which the parties may themselves file a copy of the lower court's order with their petition of appeal, and that, adverting to the expense of procuring a copy of the magistrate's order or proceeding which must be written on stampt paper, and to the delay which not unfrequently takes place before it is granted, during all which time the party is undergoing the sentence awarded against him, it was not intended to debar such party from preferring his petition of appeal immediately on the passing of the order or sentence, by which he might consider himself aggrieved without waiting for a copy of it.

To the Officiating Register of the Nizamut Adawlut, Western Provinces, dated 21st April, 1837.

I am directed by the Presidency Court to acknowledge the receipt of your letter of the 17th ultimo, No. 253, enclosing copy of a letter from the session judge of Bundelkund under date the 4th ultimo, and in reply to state that the Court concur in the construction which the Western Court propose to adopt in their answer to the session judge. I am at the same time directed to observe that the Court consider it to be discretionary with the session judge or commissioner in such cases to call for the magistrate's proceedings or not, with reference to the circumstances of each particular case, as he may see occasion.

March 17th, 1837.

From the Judge of Zillah Ghazeepore to the Officiating Register of the Western Provinces, dated 23d March, 1837.

No. 1082.

A pleader dismissed from his situation by a judge cannot be permitted to practise

Under the generally received maxim, that it is not within the competency of a public functionary to reverse, of his own authority, any order regularly recorded by his predecessor, however much he may dissent from the opinion which formed the basis of that

again by such judge's successor, without sanction having been obtained from the Sudder Dewanny Adawlut to review the order for dismissal.

order, I am doubtful of my competency to admit as a pleader of this court, an individual dismissed from that situation by the late additional judge with the concurrence of my predecessor in office, for having been guilty of an irregularity in the course of his official duty.

2. Without however adverting to the merits of this particular case, which has been twice before the Court of Sudder Dewanny Adawlut in the form of an appeal, I am desirous of being favored with the Court's opinion on the general principle above stated, as far as regards questions of a purely miscellaneous nature, wholly unconnected with any cause or suit decided or depending.

From the Officiating Register, Western Provinces, to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 31st March, 1837.

I am directed by the Court to request that you will submit, for the consideration of the Calcutta Court, the accompanying copy of a letter from the judge of Ghazeepore under date the 23d instant.

2. The Court are of opinion that the principle of the rule, referred to in the first paragraph of Mr. Smith's letter, must be considered equally applicable to cases of the nature of those described in the latter part of his communication, and that if in any instance a judge should see reason to question the propriety or legality of any order passed in such cases by his predecessor, and a revision of it should appear to him requisite for the ends of justice, he should apply to the Court for authority to grant the same in the prescribed form.

The Presidency Court, on the 14th April, 1837, concurred in this construction.

March 31st, 1837.

From the Judge of Zillah Dacca to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 10th March, 1837.

No. 1083.

Mode of proceeding against a vakeel, neglecting or refusing to give up his sunnud of office.

Kisheneb Nund Barajyah, formerly a vakeel of the court of the moonsiff of Talmak, who has been dismissed, will not give up his sunnud of appointment as required by Regulation XXVII. of 1814, Section 4, but has made a futile pretence on being applied to for the same, and gone out of the way when again sought for that purpose.

2. While legislating for taking back these sunnuds, the legislators have forgotten to point out any process by which they are to be obtained from parties unwilling to give them up: I solicit therefore the instructions of the Sudder Dewanny Adawlut in regard to such cases.

To the Judge of Zillah Dacca.

I am directed to inform you that in the case cited you should summon the vakeel to attend at your court; and in the event of his neglecting to attend, or, attending, to deliver up his sunnud, you are competent to punish him for evasion of process, or contempt of court.

The Western Court, on the 21st April, 1837, concurred in this construction.—Letter to the Judge issued 5th May, 1837.

March 31st, 1837.

1084—1085.
31 March, 14 April, } 1837.

From the Officiating Judge of Zillah Sylhet to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 30th December, 1836.

I have the honor to submit, for the consideration of the superior Court, the urgent necessity for modifying Clause 8, Section 14, Regulation XXVI. of 1814, by substituting the following clause in lieu thereof, should it meet with the approval and sanction of the Court to recommend the same.

No. 1084.
1814.
Reg. XXVI. Sec. 14, Cl. 8.

Modified Rule, Clause 8.

"When the process is taken out, the nazir shall pay the peon serving the same two-"fourths of the amount of the tullubanah received by him on account of such process, "and when it shall have been executed and returned according to the preceding "rules, the nazir shall pay another one-fourth to the peon and shall be entitled to appro-"priate the remainig one-fourth of the tullubanah to his own use."

As the rule at present stands every pyada must perform the duty required from him by the nazir of serving process without a particle of tullubanah in his pocket, thereby leaving the individual clothed with the authority of his badge to commit oppression, and which, I fear, is sometimes done with impunity.

To the Judge of Zillah Sylhet, dated 31st March, 1837.

I am directed to communicate to you the opinion of the Court that a judge is not competent to exercise any interference in the matter referred to in your letter of the 30th December last, No. 46; but that the nazir may himself be permitted to exercise his discretion in advancing to the peon, on his own responsibility, such portion of the tullubanah as he might consider necessary for the subsistence of the latter while engaged in serving the process on account of which it was paid; consequently no modification of Clause 8, Section 14, Regulation XXVI. 1814, appears to be called for.

The Western Court concurred in this construction.

March 31st, 1837.

From the Officiating Session Judge of Furruckabad to the Register of the Court of Nizamut Adawlut, Western Provinces, dated 6th April, 1837.

I request the favor of your laying before the Court of Nizamut Adawlut the accompanying copy of a letter No. 125, dated the 4th instant, from the magistrate of Furruckabad, who solicits an opinion whether Section 5, Regulation VII. 1819, may be applicable in a given case.

No. 1083.
1819.
Reg. VII. Sec. 5.

From the Magistrate of Furruckabad to the Officiating Session Judge of the District, dated 4th April, 1837.

I shall feel obliged by your ascertaining for me from the Sudder Nizamut, whether the following case comes within the scope of Section 5, Regulation VII. 1819. A enters

into a contract with B, on the security of C and D, for furnishing a boat to convey certain goods of A, to a fixed place on the banks of the river; thereafter B, unloads the goods, and refuses to carry them on according to his agreement; can then B, not being a workman, be punished by the magistrate under the regulation quoted?

To the Officiating Session Judge of Zillah Furruckabad, dated 14th April, 1837.

I am directed by the Court to acknowledge the receipt of your letter of the 6th instant with its enclosure, from the magistrate of Furruckabad.

2. In reply, I am directed to inform you that in the case put by the magistrate, the provisions of Regulation VII. 1819 would not apply; the contract seems to have been of a purely civil nature, and security was taken for the performance of it; the person aggrieved should therefore seek his remedy in the civil court.

The Presidency Court, on the 12th May, 1837, *concurred in this construction.*

April 14th, 1837.

To the Register of the Court of Nizamut Adawlut, Western Provinces, dated 14th April, 1837.

No. 1086.

1806. Reg. II. Sec. 11. 1817. Reg. XVII. Sec. 13, cl. 1.

I am directed by the Court to request that you will lay before the Court of Nizamut Adawlut for the Western Provinces the accompanying extract, paragraph 10, from a letter from the commissioner of circuit, 18th division, dated 10th ultimo, No. 20, submitting the trial of Hoorail Ram Shah for perjury.

2. The Court are of opinion that the wilful concealment of bond debts due to an insolvent debtor, examined on oath under the rules contained in Section 11, Regulation II. 1806, is punishable on conviction as wilful perjury under Clause 1, Section 13, Regulation XVII. 1817, and will, with the concurrence of the judges of the Western Court, so instruct the commissioner of the 18th division.

The Western Court, on the 28th April, 1837, *concurred in this construction.*

April 14th, 1837.

From the Acting Additional Judge of Zillah Chittagong to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 13th February, 1837.

No. 1087.

The fact of two distinct and separate debts, due by different individuals, being engrossed on a stamp of a value sufficient to cover the whole amount, would not vitiate the deed.

I have the honor to solicit the Court's construction, as to the legality of a Judge receiving a tumasook filed by a plaintiff suing for the amount, wherein money is stated to be lent to two persons unconnected with each other. Thus five rupees in the bond is stated to be lent to A and twenty-nine rupees to B, those persons are as far as I can judge unconnected, and even unknown to each other; it is in evidence the loans are embodied in one bond to evade the stamp duty the bond comes under, (on account of its date, Regulation I. of 1814,) which prescribes that bonds for these two sums should be written on paper of the value of two annas each. If I admit this document and decree on it, I afford means of defeating the intent of the stamp regulations.

To the Acting Additional Judge of Chittagong, dated 21st April, 1837.

I am directed by the Court to inform you that, provided the value of the stamp be sufficient, under the Regulation in force at the time the bond was executed, to cover the total amount of thirty-four rupees, the fact of two distinct and separate debts, one of five and the other of twenty-nine rupees, due by different individuals, being engrossed thereon, would not vitiate the deed. The bond is herewith returned.

The Western Court, on the 23d March, 1837, concurred in this construction.

April 21st, 1837.

To the Judge of Zillah Jessore.

No. 1088.
1829.
Reg. X Schedule B.
1832.
Reg. VII. Sec. 8.

I am directed to observe that Section 3, Regulation VII. 1832, modifies Schedule B., Regulation X. 1829, only so far as relates to the value of the stamp on which "pleadings" in suits in the judge's court shall be written, and that all "ism-nuvecsees" or the names of witnesses must as heretofore be charged as "exhibits" and written on stampt paper of the value of one rupee (see Art. 5 and 11, Schedule B.)

2. In reply to your second question, I am directed to state that in regular cases still pending before the Sudder Dewanny Adawlut, in which that Court may direct the zillah judge to take evidence to any particular point, the ism-nuvecsees or the list of the names of witnesses filed before the zillah judge must be written on a stamp of the same value as if the same had been filed in the Court of Sudder Dewanny Adawlut, viz. two rupees; but in suits sent back for further investigation and re-trial to the zillah judge, the ism-nuvecsees will be received on stampt paper value one rupee.

The Western Court, on the 12th May, 1837, concurred in this construction.—Letter to the Judge of Jessore issued 26th May, 1837.

April 21st, 1837.

Extract of a Letter from the Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 28th April, 1837.

No. 1089.
'Parties under established authorities, exercising judicial powers, enjoy privilege from arrest by the civil courts.

Para. 1. I am directed by the Court to request that you will submit, for the consideration of the Calcutta Court, the accompanying copies of the correspondence, noted in the margin,* involving the general question whether parties in attendance under process before a collector or deputy collector, exercising judicial powers under Regulation VII. of 1822, or any other enactment, enjoy any legal privilege from arrest by the civil courts, or courts of Dewanny Adawlut.

* Letter from additional judge of Ghazeepore, dated 23d July, 1836.
Ditto to secretary to lieutenant governor, dated ditto.
Ditto from ditto with its enclosures, dated 20th October, 1836.
Ditto to secretary to Government, dated 3d March, 1836.
Ditto from ditto, dated 22d ditto.
Advocate-general's opinion.
Copies of Persian enclosures received from Sudder Board with letter, 17th February, 1837.

5. The Court observe that the existing Regulations contain no provision expressly exempting parties in attendance on the courts of Dewanny Adawlut from arrest in civil cases, but that on a reference to the Advocate General under date the 24th August, 1810, a copy of whose reply is annexed, the following opinion was obtained from that officer, viz. "that a man attending a court of justice as a party or witness in a cause of any sort, "could not be arrested on process in a civil suit, the protection being eundo, morando and "redeundo, and a reasonable construction being given as to what is going, staying and "returning." By this rule the Court observe that the practice of the civil courts in matters of this nature has hitherto been regulated, and with reference to the terms of Clause 1, Section 23, Regulation VII. of 1822, which declares that "in so far as concerns "the summoning and examination of witnesses, &c. in cases of the description of those "therein mentioned, the cutchery or office of the collector shall for the time being be "deemed and held a court of civil judicature," the Court are of opinion that under the spirit thereof the same principle must be held to apply to the proceedings of the revenue authorities when exercising judicial functions under the Regulation above cited, or any other enactment, and that consequently, when so engaged, they must be considered to be invested with the same powers in regard to the protection of parties, in attendance before them under process, from arrest in civil cases, as are possessed and exercised by the courts of Dewanny Adawlut.

Opinion of the Advocate General.

It is a rule with us that no man attending a court of justice as party or witness in any cause of any sort shall be arrested on process in a civil suit. The protection is eundo, morando, and redeundo, as we term it, and a reasonable indulgence is given in the construction of what is going, staying, and returning. As to the mode of procuring redress where a party is arrested contrary to this rule, if the arrest were made in the face of the court which he was attending, that court would take upon itself to liberate him and probably to punish those who are actually concerned in the arrest, for the contempt and disturbance, and they would probably interfere if the arrest was within reach of their aid, though not within their walls, so that they could by their interference give the party his privilege at the time. But if the arrest were made while the party was on his way to or from the court and out of its immediate reach for the purpose of prevention, he must apply to that court from which the process issues, to discharge him from the arrest.

*The majority of the Calcutta Court concurred.**

From the Officiating Additional Judge of Zillah Jessore to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 4th March, 1837.

No. 1090. 1830. Reg. VI. Sec. 8.

I have the honor to forward herewith a copy of my proceeding under date the 1st instant, on a durkhast presented to this Court by Mr. Rainey, a zumeendar of this district.

* See construction No. 603.

applying for the confinement, in the civil jail here, of a person named Mirtunjoy Rai, against whom he holds a decree of the late Court of Appeal; and as I am uncertain whether under the peculiar circumstances of the case it can or should be complied with, request the favor of your procuring me the opinion of your Court in the matter for my guidance, &c.

2. Section 3 of Regulation VI. of 1830 states, "that if the plaintiff in any case shall neglect to pay the diet allowance for any defendant on or before the day on which it may become due, such defendant shall forthwith be discharged, and shall not again be liable to personal arrest and confinement in the same matter, &c. &c." Now in the case under report, it appears that Mirtunjoy was once before (in July, 1825) arrested and brought in this very matter and kept under charge of the nazir's chapprassis for seven days, when (no diet allowance being paid) he was released; and what I wish to know is, whether, under these circumstances, the said Mirtunjoy can again be arrested and confined for the same debt, or in other words, whether *temporary confinement under charge of peadahs*, &c. is to be considered as a bar to all further *personal arrest* towards defendants in all such cases.

To the Officiating Additional Judge of Zillah Jessore.

I am directed by the Court to inform you that under the circumstances stated, Mirtunjoy, never having before been confined in jail on account of the demand against him, is liable to be arrested and committed to jail under the decree of the late Calcutta Court of Appeal.

The Western Court, on the 2d June, 1837, *concurred in this construction.—Letter to the Officiating Additional Judge of Jessore, issued 23d June*, 1837.

May 19th, 1837.

From the Officiating Commissioner of Circuit, 12th Division, to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 14th March, 1837.

No. 1091.

Mode of proceeding in regard to a bund constructed by a person on his own land, which is injurious to the property of another.

I have the honor to submit, for the consideration of the Court of Sudder Nizamut Adawlut, copy of a letter addressed to me by the magistrate of Tirhoot on the 7th instant, with my reply thereto of to-day's date, and with reference to the point mooted by Mr. Wilkinson, to request the opinion of the Court on the following point.

2. A bund is constructed by A. on his own land, which bund B. proves to be injurious to his interests; can the magistrate order the destruction of the bund?

To the Officiating Commissioner of Circuit for the 12th Division, dated 26th May, 1837.

I am directed by the Court to observe that they are of opinion that cases of the nature of the one which forms the subject of the present reference, would appear to come more properly within the jurisdiction of the civil than of the criminal courts, but that particular instances may arise in which the immediate interference of the magistrate would

26 May, 2 June, } 1837.

be necessary and proper to prevent either a breach of the peace or any serious injury to the property of the complainant, supposing of course the act complained against to have been of recent occurrence as would seem to have been the case in the instance under consideration.

2. The Court therefore direct that you will acquaint the magistrate of Tirhoot with the above opinion, and desire him to pass his orders in conformity with it and according to the facts of the case that may be established before him, leaving any party dissatisfied with his order to appeal to your court in the usual manner.

The Western Court, on the 28th April, 1837, concurred in this construction.

May 26th, 1837.

From the Register of the Western Provinces to the Officiating Register of the Presidency Court of Sudder Dewanny Adawlut, dated 2d June, 1837.

No. 1092. 1823. Reg. VI. 1831. Reg. V Sec. 5. 1830. Act X. Sec. 5.

I am directed by the Court to request that you will submit, for the consideration of the Calcutta Court, the accompanying extract, paragraph 52, of a letter from the officiating judge of Furruckabad, containing his annual report on the administration of civil justice in that district for the past year.

2. With regard to the general question involved in the paragraph under consideration, the Court direct me to state that it might be inferred from the terms of Section 5, Act X. of 1836, that the moonsiffs had no jurisdiction in regular suits of the nature of those therein described, though otherwise in all respects within their cognisance; the Court observe, however, that Regulation V. of 1831 contains no exception in respect to such cases, nor are they aware of any other rule on the subject; and they are, therefore, of opinion that, under the strict spirit of the existing laws, regular suits instituted in conformity to the provisions of Regulation VI. of 1823, or of the Act above cited, in which the amount or value of the claim may not exceed 300 rupees, and in which neither party may be an European British subject, European foreigner, or an American, are cognizable by the moonsiffs in like manner with all other cases legally within the competency of those officers to dispose of.

Extract from a Letter from the Officiating Judge of Furruckabad.

Para. 52. Suits under Regulation VI. of 1823, regarding indigo, are not included in the exceptions of Section 5, Regulation V. 1831, which detail the suits cognizable by the moonsiffs. I have in the case of a suit noted in the margin* prohibited the moonsiff of Chilrarnow from trying it, adverting to Section 5, Act X. of 1836, by which it is rendered competent to the judge to refer such suits to the sudder ameen or principal sudder ameen, whence an inference may be drawn that the moonsiffs are not empowered to try such suits.

* Mr. Birch versus Jooalpershad, &c. defendants, rupees 21-6, penalty three times the sum advanced, under clause 4, Section 3, Regulation VI. 1823.

The Presidency Court, on the 23d June, 1837, concurred in this construction.

June 2d, 1837.

From the Judge of Zillah Moradabad to the Officiating Register of the Western Provinces, dated 3d April, 1837.

No. 1093.

Applications on stampt paper for the payment of money deposited in court are necessary except when payment has been specifically ordered.

It has been the custom in this zillah, and I believe is generally observed in the other courts, to require applications for an order for the payment of money deposited in court to be written on stampt paper of the value of eight annas. This course appears to me to subject the persons for whom the money is deposited, to a stamp duty not contemplated by the Regulations. Sums for a less amount than fifty rupees, when paid to claimants, are given on receipts taken on plain paper, but before they can procure an order for the payment, they must be subjected to a demand of eight annas, and when the sums are trifling this is found to be a heavy tax. After the amount has reached the treasury of the court the applications to receive the sum, in my opinion, should be made on plain paper, the receipts of course, when the amount exceeds fifty rupees, being on stampt paper. I request the Court's opinion on this point.

To the Judge of Zillah Moradabad, dated 9th June, 1837.

The Court having again had before them your letter No. 20, under date the 3d April last, direct me to communicate to you their opinion, in reply to the question therein submitted, that applications for the payment of sums of money deposited in court must in every case be made on stampt paper as a record, unless a specific order should, at any time, have been passed ordering payment of the amount.

The Presidency Court concurred in this construction.

June 9th, 1837.

From the Judge of Zillah Chittagong to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 23d May, 1837.

No. 1094.

1831. Reg. VIII. Sec. 15.

I beg leave to submit, for the orders of the superior Court, a copy of my proceedings under date the 13th instant, held in the case of Ameen Shurreef, appellant, *versus* Mahomed Bouhir, respondent. The point I desire to bring to the notice of the Court is the want of observance on the part of the revenue authorities to the legal requisitions of the court calling for the record of a summary suit under Section 15, Regulation VII. 1831. The collector indeed contends that the matter is not the same. The decision of the collector and the decisions of the lower tribunals are herewith submitted; and I believe there will not be two opinions upon the question that really the cause of action originates from the same source—a claim on the part of the appellant to hold a talook at a fixed rent, and a claim on the part of the respondent to assess the lands at the village rates; the appellant by Section 33, Regulation XI. 1822, has a right to resist payment until a final decree is passed by a competent court of justice.

2. That decree has not yet been given, for the cause of action is under abeyance in a special appeal, and the series of actions constitutes only one suit. The retention of

the record, and the judgment of the collector may therefore involve what the legislature sought to avoid, that is, contrariety of opinion. And opposition to what appears to me a legal order of the court is, to say the least, not treating it with that respect which is its due. I call upon the superior Court, if I am not in error in the premises, to support my authority.

To the Judge of Zillah Chittagong.

I am directed to inform you that, in the opinion of the Court, it is not necessary for them to pronounce whether the matter pending before the collector and yourself is, or is not the same. It is sufficient that you at present believe it to be so, and that you conceive it to be essential to the decision of the suit instituted in your court that you should be furnished with the record in question.

2. Accordingly the Court desire me to inform you that if the collector refuses to obey your orders, it is competent to you to proceed according to Section 36 of Regulation XIV. 1793.

The Western Court, on the 11th August, 1837, concurred in this construction.—Letter to the Judge issued 1st September, 1837.

June 23d, 1837.

Resolution of the Presidency Court of Sudder Dewanny Adawlut, under date the 30th June, 1837.

No. 1095.
Circular Order No. 171, Vol. II. 4th March, 1836.

The Court, having had under their consideration the circular order No. 171, of the 4th March, 1836, are of opinion that interest on the cost of suits should be granted in all cases, whether the claim be for money, land, or any other description of property.

The Western Court, on the 21st July, 1837, concurred in this construction.
June 30th, 1837.

From the Officiating Judge of Zillah Chittagong to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 28th February, 1837.

No. 1096.
Fines under Sec. 12, Reg. III. 1793 ; Sec. 9, Reg. II. 1803 ; Sec. 21, Reg. IV. 1793 ; Sec. 22, Reg. III. 1793 ; Sec. 3, Reg. XIII. 1796 ; Sec. 55, Reg. IV. 1793 ; how to be realized.

I beg to solicit the opinion of the superior Court whether in case of the non-attendance of a party fined under Section 21, Regulation IV. 1793, and Section 3, Regulation XIII. of 1796, also Section 12, Regulation III. 1793, the fine is to be levied under process as in execution of decrees, and whether or no Section 3, Regulation XIII. 1796, is to be construed as contempt of court: in instances coming under Regulation XIII. 1796, are not the person and property both tangible?

To the Officiating Judge of Zillah Chittagong, dated 7th July, 1837.

I am directed to inform you that, as the law now stands, in cases coming under the provisions of Section 12, Regulation III. of 1793, the party fined is liable to be committed to close custody until the amount be paid, but that, where the fine may be imposed

for a litigious appeal in conformity to Section 3, Regulation XIII of 1796, the amount, if not immediately forthcoming should be realized under the same rules as are applicable to the execution of decrees of Court

The Western Court concurred in this construction.

July 7th, 1837

From the Officiating Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny and Nizamut Adawlut, dated 8th July, 1837

No. 1097.

1814
Reg. XXVIII.
Sec. 12, Cl 3.
An order of the S. D. A refusing to admit an appeal in *forma pauperis* is not appealable to the Queen in Council.

A question having arisen as to whether an appeal lies to the King in council from a summary order passed by the Court of Sudder Dewanny Adawlut, refusing on the grounds specified in Clause 3, Section 12, Regulation XXVIII of 1814 to admit an appeal *in forma pauperis* from the decision of a zillah judge, in which the sum or value awarded amounted to 50,000 rupees, the petitioner being, at the same time, left at liberty to institute his appeal on performing the conditions prescribed by the Regulations for persons not suing as paupers, I am directed to request you will submit the point for the consideration and opinion of the Calcutta Court.

* Syud Kulub dur Ali versus Dhooman Behee and others, respondents Page 103 volume IV S D. Reports

The Court observe that in the case cited in the margin* it was ruled by the Court of Sudder Dewanny Adawlut that an order passed by a Provincial Court, refusing to admit an appeal *in forma pauperis* on the merits of the case, and without reference to the question of pauperism was final and conclusive and that in a note appended thereto, it is added that "the Sudder Dewanny Adawlut had, on many occasions, construed Clause 3, Section 12, Regulation XXVIII 1814, as vesting the appellate authority with discretion to pass a final order not open to special appeal.' The Court are of opinion that the same principle must be held to apply to orders passed by themselves of the nature of that described in the preceding paragraph, and that consequently no appeal lies from such orders to the King in council, and, should the Calcutta Court concur in this construction, they propose to adopt it as a rule of future practice

The Prendency Court, on the 4th August 1837, *concurred in this construction*

July 8th, 1837

From the Session Judge of Zillah Dinagepore to the Officiating Register of the Presidency Court of Nizamut Adawlut dated 16th June, 1837

No. 1098.

Mode of proceeding when a person, whether a European British subject or a native in a petition of appeal from the orders of a magistrate falsely and

I request you will be pleased to obtain for me the Court's orders on the following reference

2 If, in a *petition of appeal* preferred to me as a session judge, on the part of a European British subject, or a native, from the decision of a magistrate or joint magistrate, (they covenanted officers of Government) the public character of either of those officers

14 } July, 1837.
21 }

maliciously asperses the character of that officer

should be maliciously and calumniously aspersed in it, have I any power, under the Regulations of Government of punishing the appellant, if I should deem it proper to do so, and if so, under what Regulation?

To the Session Judge of Zillah Dinagepore.

I am directed to communicate to you the opinion of the Court that if any person, whether a European British subject or a native, appealing from the decision of a magistrate or joint magistrate, falsely and maliciously asperses the character of such officer in his petition of appeal, or other document filed in your court, you are competent to punish the offence as for a contempt of court, under the provisions of Regulation XII. of 1825.

The Western Court, on the 4th August, 1837, *concurred in this Construction.—Letter to the Session Judge issued 25th August*, 1837.

July 14th, 1837.

To the Register of the Nizamut Adawlut, Western Provinces, dated 21st July, 1837.

No. 1099.

1807.
Reg. II. Sec. 4, Cl. 3.

I am directed by the Court to forward the accompanying extract from the statement of prisoners punished, without reference, by the officiating session judge of Tipperah, at the monthly jail delivery of that district for June last, relating to the case of Thakoor Doss, No. 6 of the statement.

2. The Court are of opinion that the crime established against the prisoner amounts to the crime of "forgery" as described in Clause 3, Section 4, Regulation II of 1807; and they therefore propose, with the concurrence of the Western Court, so to inform the session judge, and to direct him to pass the minimum sentence prescribed by Clause 2, Section 9, Regulation XVII. of 1817, and to refer the trial for the Court's order should he think that punishment too severe.

July 21st, 1837.

Extract from the Statement of Prisoners punished, without reference to the Nizamut Adawlut, by the Session Judge of Zillah Tipperah at the Jail Delivery for the month of June, 1837.

No. of Cases.	No. of Prisoners.	Names of the Prisoners.	Sex.	Age.	Religion and Caste.	Profession.	Crime charged.	Crime established, and when it was commited.	Convicted on violent presumption or on full legal proof.	Sentence of the Sessions Judge, and when it was passed.	Explanation and Remarks.
3	6	Thakoor Doss,	Male,	35	Hindoo,	Employment,	Charged with opening the Government dawk wallet and extracting the telegraph, and altering the hour of arrival and despatch of the Government mail with a view to defraud the Government. Committed for trial on the 17th June, 1837, by Mr. W. J. H. Money, officiating magistrate of Tipperah.	Convicted of opening the Government dawk wallet and extracting the telegraph, and altering the hour of arrival and despatch of the Government mail with a view to defraud the Government. Committed on the 8th May, 1837.	Full legal proof.	Sentenced to two years' imprisonment with labor in irons, 30th June, 1837.	This case was committed by Mr. W. J. H. Money, officiating magistrate, and tried by me with the aid of three assessors. It may be thus stated. The prisoner was agent of the dawk contractor at this station for checking the entries in the telegraph, according to which his em-

ployer receives a premium or otherwise, with reference to the rate at which the mails travel. It appears that the prisoner's superintendence extends along the line from Comillah to Dacca. On the 8th of May last, after the mails had been despatched from the post office, and proceeded about a mile on the Dacca road, the prisoner called the peon with the bag out of the high road to his own house, a short distance from it; and there, having inserted his hand under the flap of the wallet, took out the telegraph, in which he altered the hour of the dawk's arrival from Chittagong, from three P. M. to five, and that of its despatch from three and a half P. M. to five and a half P. M., with a view to obtain the premium of the extra speed which would thus appear to have been attained between Comillah and Dacca, as would be shown by the entry subsequently made of the hour of arrival at the Dacca post office. The alteration however was so palpable and the time gained so unusually great, that the postmaster general returned the telegraph, and called the attention of the deputy postmaster to it, who sent the case to the magistrate, before whom the above facts being clearly established the prisoner was committed for trial before this court. Here, as before the magistrate, he pleaded not guilty, but the crime being clearly established, in concurrence with my assessors he was sentenced accordingly. It is here to be observed that this very individual was convicted of uttering forged bank notes, under No. 1 of the Tipperah calendar for May, 1837, so that the period of his present sentence commences from the expiration of that before awarded him.

The Western Court, on the 18th August, 1837, concurred in this construction.

To the Register of the Nizamut Adawlut, Western Provinces, dated 21st July, 1837.

No. 1100. 1807. Reg. IX. Sec. 4

I am directed by the Court to forward to you the accompanying extract from their proceedings of this day's date, containing a construction of Section 4, Regulation IX. of 1807, which they propose, with the concurrence of the Western Court, to communicate to the commissioner of the 18th division, and to the officiating session judge of the 24-Pergunnahs.

July 21st, 1837.

Extract from the Proceedings of the Presidency Court of Nizamut Adawlut, under date the 21st July, 1837.

Para. 2. With regard to the second point noticed in the session judge's letter to the joint magistrate, viz. his directing that officer not to issue any summons or dustuk, on the report of a darogah, for the apprehension of a released convict, the Court remark that under the existing Regulations the magistrates are fully authorized* to apprehend such persons, whenever sufficient cause may appear for such a proceeding, upon the report of a police officer. The session judge's instructions therefore to the joint magistrate were in the judgment of the Court irregular, and they are accordingly annulled.

* Vide Sec. 4, Reg. IX. 1807

1100—1101.

21 July } 1837.
4 Aug. }

From the Register of the Western Provinces to the Officiating Register of the Presidency Court of Nizamut Adawlut, dated 25th August, 1837.

I am directed by the Court to acknowledge the receipt of your letter No. 2287 under date the 21st ultimo, with its annexed extract from the proceedings of the Calcutta Court, containing a construction of Section 4, Regulation IX. of 1807.

2. It being expressly declared in the latter part of the section above cited, that the rule laid down in the preceding part shall not be considered to restrict a magistrate from issuing process to apprehend a person suspected of having committed a heinous crime, or for whose apprehension sufficient cause may be shewn, upon the report of a police officer or any other credible information, the Court direct me to state that they concur in the construction of the section in question, which the Calcutta Court propose to communicate to the commissioner of the 18th division and the officiating session judge of the 24-Pergunnahs.

From the Judge of Zillah Ghazeepore to the Register of the Court of Sudder Dewanny Adawlut, Western Provinces, dated 19th July, 1837.

No. 1101.
Reg. X. 1829.
Schedule B. Article 8.

I request you will have the goodness to obtain for me the opinion of the Court of Sudder Dewanny Adawlut on the following point.

2. The rules for estimating the value of property, real or personal, claimable by action in the civil courts, contained in Section 14, Regulation I. of 1814, Section 23, Regulation XXVI. 1814, and Section 5, Regulation XIX. 1817, have been either formally or virtually superseded by the provisions of the note attached to Article 8 of Schedule B. referred to in Section 17, Regulation X. 1829, but no provision is expressly made in the fourth paragraph of the note in question, to meet the description of suits contemplated in the penultimate paragraph of Section 5, Regulation XIX. 1817, above quoted, as per extract in the margin.*

* "If the suit be not for a right of property, or for a permanent tenure, but for a farm leasehold of any denomination, during a limited term; or for any interest in the land during a limited period only; the valuation of the plaintiff's claim, in pursuance of the Regulations above-mentioned, is to be made according to the nearest estimate that can be formed of the actual value of the thing sued for."

3. The question I would ask therefore is, whether the rules latest enacted, namely, those prescribed in the said fourth paragraph of the note to Schedule B. of Regulation X. 1829, are applicable to such cases, as well as to suits of the description particularized below, and to all other actions whatsoever, not coming within the meaning of the first three paragraphs of the note.

First.—Suits of kashtkars against the proprietors of the land whether assessed or rent-free, to maintain, preserve, or obtain possession of their right of cultivation in a given quantity of land, held on a potta by prescription or otherwise; or suit to reverse a summary decision of ejectment, passed against them in the zumeendars' favor, under the provisions of Regulation XLIX. 1793.

Secondly.—Suits on the part of the proprietors whether malgoozars or maafeedars, to eject an under-tenant from lands held by him in ryotty tenure.

From the Register of the Western Provinces to the Officiating Register of the Presidency Court of Sudder Dewanny Adawlut, dated 4th August, 1837.

I am directed by the Court to request that you will submit, for the opinion of the Calcutta Court, the accompanying copy of a letter from the judge of zillah Ghazeepore, No. 207, under date the 19th ultimo.

2. The Court propose, with the concurrence of the Calcutta Court, to inform Mr. Smith, that Section 5, Regulation XIX. of 1817, as well as all other existing Regulations relating to the imposition, levying and collecting stamp duties is rescinded by Section 2, Regulation X. of 1829; and as the latter enactment contains no express provision for computing the amount value of suits of the nature of those described in his letter, they must be considered as falling under the general rule laid down in the fourth paragraph of the note to Article 8, Schedule B. of that Regulation.

The Presidency Court, on the 25th August, 1837, concurred in this construction.

August 4th, 1837.

Resolution of the Court of Sudder Dewanny Adawlut, held at Fort William, under date the 18th August, 1837.

No. 1102.

Orders of the S. D. A in miscellaneous cases, are not appealable to the Queen in council.

Read a translation of a petition presented by Ranee Jye Doorga, praying that she may be allowed to appeal to the King in council against an order of Mr. D. C. Smyth, for the sale of her property in satisfaction of a decree against her.

Read a proceeding held before Mr. D. C. Smyth, in which that gentleman records his opinion that the case is not appealable to the King in council, but at the same time directs, in compliance with the petitioner's request, that the matter be brought before the English sitting.

The Court, having taken into consideration the papers laid before them, concur in opinion with Mr. Smyth, that the orders of this Court in all miscellaneous cases are final. Accordingly it is resolved that the Court will in future decline to admit any appeals to the King in council, excepting such as are expressly provided for by Regulation XVI. of 1797.

The Western Court, on the 15th September, 1837, concurred in this construction.

August 18th, 1837.

Extract from a Letter from the Officiating Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 3d Feb. 1837.

No. 1103.

Meaning of the term "ba fursundan" as applicable to grants whether of land or money.

Para. 1. I am directed by the Court to request that you will lay before the Calcutta Court the accompanying copies of a letter from the secretary to the Honorable the Lieutenant Governor under date the 21st ultimo, and of its enclosure from the Honorable the Court of Directors, calling upon the Court for a definition of the legal and practical meaning of the term "ba fursundan" when made use of in "jaghire" grants of the nature of those referred to by the Honorable Court.

Extract of a Letter from the Deputy Register to the Register of the Court of Sudder Dewanny Adawlut, Western Provinces, dated 1 August, 1837.

Para. 1. I am directed by the Court to acknowledge the receipt of your letter noted in the margin,* on the subject of a reference from the Government of Agra regarding the import of the term "*ba furzundan*" when found in grants or sunnuds.

* No. 77 of the 3d February.

2. The Presidency Court have had a similar reference made to them by the Government of Bengal, and have resolved to submit a reply thereto, in the terms of the accompanying draft, which is now forwarded to you, for the concurrence of the judges of the Western Court, together with the several documents* therein referred to.

* Futwa of the law officers of the Court given in 1819, with a translation by Dr Lumsden.
Futwa of the present law officer with a translation.

August 18th, 1837.

To the Secretary to the Government of Bengal in the Judicial Department, dated 27th October, 1837.

I am directed by the Court to acknowledge the receipt of Mr. Secretary Mangles' letter of the 13th December last, No. 1840, and its enclosures, requesting the Court's opinion in regard to the meaning and scope of the term "ba furzundan" as applicable to grants whether of land or money.

2. In reply, I am directed to observe that the only futwas the Court have been able to discover touching this question are, that in the case of Musst. Hya-oon-Nissa and Khoondgar Abdoolla, appellants, *versus* Mofukhur-ool Islam, respondent, (see page 106, volume I, Sudder Dewanny Adawlut Reports,) decided in 1805, a translation of which is found in page 331, Macnaghten's Principles and Precedents of Mahomedan Law, and one given by the law officers of this Court.

3. The first defines the term "furzundan." The question assumes that the grant is hereditary (and from its nature, and endowment for religious purposes, it is so,) and asks whether the grandson in the female line or grandson in the male line can be enumerated among the offspring or "*furzundan*" of the grantee. The answer declares "*furzundan*" to mean "lineal descendants in the male line," and excludes the grandson in the female line of the grandson in the male line, "because the descendant of a man's "daughters are not the lineal descendants of that man, lineage being derived from the "father, and not from the mother." It does not determine the meaning of the terms "ba furzundan" or "mye furzundan." The doubt is, whether the use of these terms creates of themselves an hereditary title without the addition of *nusulun baad nusulin* or words of the same import, or merely a joint interest during the lives of the grantee and his *furzundan*.

4. The futwa of 1819 is rather in favor of the latter interpretation. The phrase "such and such places are granted in jagheer to Gholam Ahmed Khan and his children "*(mye furzundan)* must therefore be understood to signify that the places in question

"are granted to him and the children sprung from his loins, and will remain in their "possession during his own life and that of those children; but if at the period of the "grant, or subsequently, he had no children sprung from his loins, but only grand chil-"dren, (literally the children of children,) then the grant must be understood to intend "the latter."

5. As in the former case the grant is presumed to be hereditary, so in this a grant in jaghoer is presumed; and a jaghoer has been determined to be a life grant merely, (see case of collector of Bareilly versus William Charles, and John Martindell, page 188, volume II. of Select Reports)

6. Under these circumstances the Court deemed it proper to consult their law officer; and from his futwa, in which they entirely concur, the Honorable the Deputy Governor will observe that the term *ba furzundan* is considered as conveying an hereditary title to the grantee and his lineal descendants, in the same manner as if the words nusulun baad nusulin had been used.

The Western Court, on the 22d September, 1837, concurred in this construction.

To the Officiating Session Judge of 24-Pergunnahs, dated 1st September, 1837.

No. 1104.
1807
Reg. IX. Sec. 22

I am directed by the Court to communicate to you their opinion that the existing Regulations give no power to a session judge to receive evidence, which has not been previously heard before the lower court, except in such cases as may have been regularly committed to him for trial at the sessions.

2. When a session judge is engaged in revising any case included in the magistrate's abstract calendar, which may appear to him not to have been sufficiently investigated, or in which further enquiry may be practicable or requisite for the ends of justice, such enquiry, according to Section 22, Regulation IX. of 1807, must be instituted by the magistrate who is to communicate the result thereof to the session judge. The principle of the rule laid down in the above Section, applies equally in the opinion of the Court to cases of the nature of those referred to by you.

The Western Court concurred in this construction.

September 1st, 1837.

From the Officiating Judge of Zillah Azimghur to the Register of the Sudder Dewanny Adawlut, Western Provinces, dated 9th August, 1837.

No. 1105.
Pleaders' fees in cases sent back for re-trial

I have the honor to submit, for the orders and opinion of the Court of Sudder Dewanny Adawlut, the accompanying copy of a petition of Seetuldeal Tewary, who is a defendant in the case of Sunkerdeal (pauper) *versus* Seetuldeal, to obtain possession of mouzah Mullooah Phar, &c. at rupees 6,095-13-0.

2. Sunkerdeal instituted a suit as pauper which was decided in favor of the defendant by the additional judge of the zillah court of Juanpoor, who dismissed the suit. The

plaintiff appealed to the Court of Sudder Dewanny Adawlut who, in their proceedings of the 22d August, 1833, considering that the decision was irregular, reversed the order of the additional judge, and directed that the case be tried *de novo*, having entered it on the file of the same number as it previously bore.

3. In the mean time this court was established, and the case being within its jurisdiction, it was sent here for trial.

4. The petitioner states that in this same case, he deposited in the court of Juanpoor the sum of about rupees 271-14½ as fee for his vakeel, who, on the decision of the case, drew out the amount, which he appropriated to his own use, and that the vakeels in this court now refuse to take up his case without his again depositing in this court a further amount of 271-14½ which sum he states that he cannot afford to pay.

5. By the order of the Court of Sudder Dewanny Adawlut, directing that the case be returned for further investigation, having brought it on the file in its former number, I am of opinion that it is not their intention that a further deposit for vakeels' fees should be made, but that it should be carried on by the same vakeels without other remuneration, which however in this instance cannot be effected, and I shall therefore feel obliged by your informing me whether it is necessary that the further deposit shall be made or not, as there are very many cases of the same nature frequently arising.

6. Also whether they consider that the vakeels are precluded by Section 23 of Regulation XXVII. of 1814, from acting in a suit where a deposit has not been made into court on their account, although the amount prescribed by the Regulations had before been deposited, and, on the decision of the suit in the first instance, been taken out by the vakeels previously employed.

From the Register of the Western Provinces to the Officiating Register of the Presidency Court of Sudder Dewanny Adawlut, dated 8th September, 1837.

I am directed to request you will submit, for the consideration of the Calcutta Court, the accompanying copies of a letter and its Persian enclosure from the officiating judge of Azimghur, dated the 9th ultimo.

2. The Court observe that under the provisions of Section 34, Regulation XXVII. of 1814 the vakeels, entertained in a regular civil suit, are required, without any additional fee, to make all motions and do all acts which may be requisite relative to such suit, not only during the trial of it, but after a decision shall have been passed, until the final judgment shall have been enforced; and as the case which has given rise to the present reference, cannot be considered to have been finally disposed of by the zillah court, the decision having been pronounced incomplete and the case ordered to be tried *de novo*, the Court propose, with the concurrence of the Calcutta Court, to inform Mr. Heyland that the defendant's vakeel should be required to refund the amount paid to him, leaving it to the court who may eventually decide the case, to award to him such portion

of the authorized fee as may appear an adequate remuneration for the trouble which he may have taken in the matter.

The Presidency Court, on the 29th September, 1837, concurred in this construction.

September 8th, 1837.

From the Register of the Western Provinces to the Officiating Register of the Presidency Court of Nizamut Adawlut, dated 8th September, 1837.

No. 1106.

A collector is not authorised to administer an oath in investigating claims to pensions of the nature described in Regulation XXIV. of 1803.

I am directed by the Court to request you will lay before the Calcutta Court the accompanying copy of a letter from the session judge of zillah Allyghur, under date the 22d ultimo, submitting his proceedings on the trial cited in the margin.*

* Government versus Buldoo Doss. Charge—Perjury.

2. The Court observe that wherever it has been the intention of the legislature that officers, employed in the revenue department, should have power to examine parties on oath, or solemn declaration, in cases pending before them either judicially or otherwise, and that the legal penalties for perjury should be applicable to such parties in the event of their giving deliberately and intentionally a false deposition on oath, or under a solemn declaration, taken instead of an oath, an express provision to that effect is contained in the Regulations, as, for instance, in Section 22, Regulation XII. of 1817; Sections 19 and 29, Regulation II. of 1819; Section 19, Regulation VII. of 1822, and other similar enactments. The Court remark, however, that Section 29, Regulation II. of 1819, applies only to money pensions granted in lieu of land, the validity of the original tenure of which may be called in question, and invests the revenue officers with no power to examine parties on oath as regards the general class of pensions referred to in Regulation XXIV. of 1803, under which head the one in point would appear to be included; nor are the Court aware of any other enactment conveying such authority as respects that description of cases. Under these circumstances the Court see reason to doubt the competency of the collector to administer an oath to the prisoner in the case before them, and by consequence whether the prosecution for perjury can be legally maintained. Previously however to passing orders on the case, the Court are desirous of learning the opinion of the Calcutta Court upon the point of law involved in it.

September 8th, 1837.

From the Session Judge of Zillah Allighur to the Register of the Nizamut Adawlut, Western Provinces, dated 22d August, 1837.

I transmit herewith, to be laid before the Nizamut Adawlut, the proceedings on the trial noted in the margin* held at the station of Allighur on the 10th instant.

* Court of session judge, zillah Allighur, trial No. 4 of the calendar for the July sessions of 1837.

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* This supersedes the construction No 840.

Government, prosecutor, *versus* Buldoo Does, aged 60 years, son of Mohun Loll, prisoner, apprehended on the 23d June, 1837
Committed on the 24th July, 1837
Charge—Perjury, 3d June, 1837.

2. The perjury in this case consisted in the prisoner falsely representing himself to be Mohun Loll, the son of Sudhuloll, the grantee of a pension given in Scindia's time, when, as sworn to by seven witnesses, it was shewn that he was Buldoo Does, the son of the above named Mohun Loll, which was corroborated by the prisoner's witnesses Rambuksh and Pirb Sing, who on being confronted with him at once called him Buldoo, son of Mohun Loll, and on being asked if he had any other name, replied they had heard he was also called Mohun in his junnum puttree or horoscope, but spoke from hearsay.

3. Hyder Ally, peishkar, and Sheo Sing, writer of the deposition, further deposed that the prisoner acknowledged his name was Buldoo at the Khyr Tehseelly.

4. The prisoner in this court persisted in calling himself Mohun Loll, and one witness appeared on his behalf, who declared he had not known him by any other name.

5. In concurrence with the assessors I deemed the prisoner guilty.

6. In accordance with the verdict, I referred to the Regulations for a punishment suitable to the crime and to my surprize was not able to discover any authorizing the collector to administer an oath in investigating pensions.

7. It will be perceived that, of the pension Regulations, XI. of 1813 alone touches on the abuses committed, and though the preamble states they merit exemplary punishment, yet no further provision is made to check the evil than the payment of six months' amount of any pension to the person, who shall satisfactorily prove to the proper authority that such pension has been fraudulently and unduly received.

8. Doubting therefore if Section 13, Regulation XVII. of 1817, can apply to a collector in such a case, I have thought it best to submit the case for the Court's orders.

To the Register of the Nizamut Adawlut, Western Provinces, dated 6th October, 1837.

I am directed by the Court to acknowledge the receipt of your letter No. 943, of the 8th ultimo, and to state in reply that they concur in the view taken of the case in question by the Western Court, but observe that if the act of perjury was committed in the course of an investigation into the conduct of the native officers authorized to pay the pensions, Clause 5, Section 10, Regulation VIII. of 1809 would apply.

Resolution of the Presidency Court of Nizamut Adawlut, under date the 8th September, 1837.

No. 1107.

1822. Reg. VIII. Sec. 6.

The Court having duly considered the proposed draft of a letter to the Western Court and to the Government, relative to the competency of the special session judge for the trial of thugs, to try all persons committed on a charge of systematic poisoning, and having fully discussed at their English sittings the various points connected therewith, record the following resolution:

Under Section 6, Regulation VIII. of 1822, the Governor General in Council is competent to prescribe, by an order under the signature of a secretary to Government,

at what station and in what manner prisoners committed to take their trial for offences perpetrated within the limits assigned to joint magistrates shall be brought to trial. Considering therefore that the thuggee officers are vested with magisterial powers with respect to the specific crimes of thuggee and poisoning, the Court are of opinion that the words "*in what manner*" must be construed to include the particular tribunal before which such prisoners are to be tried, and that consequently the trials before Mr. Ravenshaw, who has been specially appointed by the orders of Government, under date the 21st February last, to try persons committed* on a charge of poisoning, must be considered to be regular and legal.

* Vide also Section 9. Regulation VII. of 1831.

The Western Court, on the 29th September, 1837, concurred in this construction.

September 8th, 1837.

From the Judge of Zillah Shahabad to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 8th August, 1837.

No. 1108. 1806. Reg II. Sec. 11.

I request to be informed whether principal sudder ameens, sudder ameens and moonsiffs are authorized to enquire into the insolvency of prisoners confined in execution of decrees of their respective courts, and to order their release under the provisions of Section 11, Regulation II. of 1806, or whether the judge alone is competent to order the release of an insolvent prisoner.

To the Judge of Zillah Shahabad.

I am directed by the Court to inform you that in cases of insolvency where individuals have been imprisoned on an application from a native court, the judge presiding in such court is evidently the proper person to determine whether or not the debtor ought to be released. The petition should however be presented to the European judge, who may either take the deposition of the prisoner himself, or refer it to the officer presiding in such native court for investigation; and if the decision should be for a release, than an application should be made to the judge for an order on the jailor to that effect, leaving any parties dissatisfied with the decision of the lower court, the option of an appeal.

The Western Court, on the 22d September, 1837, concurred in this construction.—Letter to the Judge of Shahabad issued 27th September, 1837.

September 8th, 1837.

From the Register of the Western Provinces to the Officiating Register of the Presidency Court of Sudder Dewanny Adawlut, dated 15th September, 1837.

No. 1109. Circular Order, No. 205, vol. 24, June 30, 1837.

I am directed to request you will submit, for the consideration of the Calcutta Court, the accompanying copy of a letter from the judge of zillah Mynpoorie, under date the 4th instant, relative to the Calcutta Court's circular letter of the 30th June last, which was issued by this Court on the 4th ultimo.

2. From the reference to Clause 2, Section 16, Regulation XXVI. of 1814, in the circular in question, the Court conclude that the Calcutta Court intended it to apply only to the courts of the zillah and city judges, there being no similar rule applicable to the principal and other sudder ameens, and should they be right in this view they propose to furnish the judge of Mynpoorie with an answer to that effect.

September 15th, 1837.

From the Judge of Zillah Mynpoorie to the Register of the Sudder Dewanny Adawlut, Western Provinces, dated 4th September, 1837.

With reference to your circular letter No. 844 of the 4th ultimo, I have the honor to request the instructions of the Court whether the decrees of the principal sudder ameen should be engrossed on Europe paper as well as those of the judge, and if so whether I am at liberty to furnish that officer with paper for this purpose at the charge of Government.

2. As the decrees of principal sudder ameens are now of great importance, it appears to me desirable that they should be written on Europe paper, and with ink of European manufacture, which is not so readily obliterated as the Indian ink.

The Presidency Court, on the 27th September, 1837, *concurred in this construction.*

To the Officiating Secretary to the Government of Bengal, in the Judicial Department, dated 20th October, 1837.

No. 1110.

In case of a sale of property (sold in execution of a decree) being reversed, and the deposit (previously forfeited to Government) ordered to be restored, the revenue authorities are bound to comply with the Court's order, appealing therefrom, if dissatisfied.

I am directed by the Court to request that you will lay before his honor the Deputy Governor of Bengal the accompanying copy of a letter from the judge of zillah Shahabad, dated the 18th ultimo, No. 248.

2. His honor will perceive that the revenue authorities have refused to comply with an order issued by the Shahabad zillah court, because they consider it to be illegal. The Court concur in opinion with Mr. Dent, the present judge of the district, who holds that the collector should have complied at once with the order without questioning its legality, and then have appealed from it to the superior Court. They accordingly request that his honor will be pleased to issue such instructions to the revenue authorities as he may deem proper.

October 20th, 1837.

From the Judge of Zillah Shahabad to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 18th September, 1837.

Jeenwur Dose, Plaintiff, *versus* Acouree Jeycurn Sing, Defendant.

For the recovery of rupees 396-10, the amount of a decree against the defendant.

I have the honor to submit the Persian proceedings noted in the margin, and to solicit the orders of the Court thereon.

No. 1. Roobucaree of the additional principal sudder ameen, dated 10th September, 1836.
No. 2. Roobucaree of the judge, dated 14th September, 1836.
No. 3. Roobucaree of the judge, dated 29th September, 1836.
No. 4. Roobucaree of the collector of Shahabad, 4th Jan. 1837.
also,
No. 5. Roobucaree of the commissioner of Patna, dated 10th December, 1836, as bearing on the points referred to the Court.

3. The following is a brief statement of the circumstances of the case.

30 October, 1837.

3. The right and title of the defendant in Mouza Chooramunpoor alias Koorkooree, was brought to sale on the 24 June, 1836, in execution of the decree in the above case, and purchased by Jaukee Sing and others, who made the usual deposit at the time of sale, and failing to pay up the balance of the purchase money within the stipulated period, the collector declared the deposit forfeited and carried it to the credit of Government. The sale was subsequently cancelled by this Court, and the collector was ordered to return to the purchaser the forfeited deposit, with which order, however, under instructions from the commissioner, the collector declined compliance. Under these circumstances I beg to refer the matter for the orders of the superior Court.

4. I agree with the commissioner in considering the judge's order for the return of the deposit *illegal*, for agreeably to the Regulations the deposit is forfeited to Government; still I am of opinion that the revenue authorities should have appealed the order, instead of declining compliance with it.

From the Officiating Secretary to the Government of Bengal, in the Judicial Department, to the Officiating Register of the Presidency Court of Sudder Dewanny Adawlut, dated 21st November, 1837.

I am directed by the honorable the Deputy Governor of Bengal to acknowledge the receipt of your letter No. 3178, dated the 20th ultimo, with its enclosure, and to request, in reply, that you will inform the Court that his honor concurs with them in the view they have taken of the point referred to them by the judge of Shahabad, in accordance with which, instructions will be issued through the Sudder Board of Revenue to the revenue authorities of that district.

From the Commissioner of the 18th Division to the Officiating Register of the Presidency Court of Nizamut Adawlut, dated 21st August, 1837.

No. 1111.
1819. Reg. VI.
1829. Reg. X. Schedule A. Exemption following Article 19.

The enclosed address from the officiating magistrate of the 24-Pergunnahs, under date the 18th instant, having reference to the construction of a regulation, I do not consider it within my competence to pass orders thereupon, and I beg to refer it for the consideration of the Court of Nizamut Adawlut.

From the Officiating Magistrate of Zillah 24-Pergunnahs to the Commissioner of Circuit, 18th Division, dated 18th August, 1837.

Certain lessees of the ghaut dues have petitioned to be relieved of the expense of having their kubooliyuts and security papers drawn out on stampt paper. On referring to the Stamp Regulation, X. of 1829, I find it stated in Schedule A, under the title of conveyances, that "all grants, *leases*, sales or the like, wherein Government in its political or territorial capacity is a party," shall be exempted from the duties thereby declared generally applicable.

1111—1113.

27 Oct. } 1837.
17 Nov. }

2. I conclude that the ghaut renters are to be considered as holding "leases from Government, in its territorial capacity," and that they are accordingly entitled to the exemption above noticed; but as it has been the practice hitherto to employ stampt paper in this matter, I beg to refer the point for your decision.

To the Commissioner of Circuit, 18th Division, dated 27th October, 1837.

In reply to your letter No. 39, of the 21st August last, I am directed by the Court to inform you that the case alluded to therein comes within the meaning of the exemption in Schedule A of Regulation X. of 1829, and that the engagements, which farmers of Government property are obliged to enter into, are not required to be drawn up on stampt paper.

The Western Court, on the 22d September, 1837, concurred in this construction.

October 27th, 1837.

From the Register of the Western Provinces to the Officiating Register of the Presidency Court of Sudder Dewanny Adawlut, dated 10th November, 1837.

No. 1112.
1837.
Act XXV.
Government suits referrible to principal and other sudder ameens.

I am directed to request you will submit, for the consideration of the Calcutta Court, the accompanying copy of a letter from the judge of zillah Ghazeepore, under date the 2d instant, soliciting the opinion of the Court as to whether suits, in which the Government or its officers may be a party, are referrible, under the provisions of Act No. XXV. of 1837, to principal and other sudder ameens.

2. The Court observe that the enactment in question makes no exception in favor of cases of the foregoing description; and as, at the time of passing the Act, the question of jurisdiction in respect to such suits was before the Government on a reference from this Court, while in the resolution, published with the draft of the Act, under date the 31st July last, it is expressly stated that the Governor General in council does not deem it proper to maintain the rule, which precludes the native judges from adjudicating claims to which the Government of its officers may be a party, the Court are decidedly of opinion that it was not the intention of the legislature to exclude cases of the nature of those described by Mr. Smith from the cognizance of the principal and other sudder ameens, and that consequently they are referrible to those officers at the discretion of the judge in like manner with all other cases legally within their competency to dispose of.

The Presidency Court concurred in the above construction.

November 10th, 1837.

Extract of a Letter from the Register of the Western Provinces to the Officiating Register of the Presidency Court of Sudder Dewanny Adawlut, dated 17th November, 1837.

No. 1113.
1819.
Reg. X. Sec. 114.

Para. 1. I am directed by the Court to acknowledge the receipt of your letter, No. 3030, under date the 6th ultimo, relative to Section 114, Regulation X. of 1819.

2. Adverting to the terms of the first part of the section in question, which are positive and express, and distinctly declare that in cases of the nature of those therein described the award passed by the civil judge, under the preceding section, shall be final and conclusive, and not subject to my appeal whatever, the Court are of opinion that no appeal would lie to the Sudder Dewanny Adawlut on the merits of the case; but upon the general principle laid down in your letter of the 25th November, 1836,* they conceive that if the decree passed by the lower court in any case of the above description were manifestly illegal upon the face of it, or any such gross or glaring irregularity should have occurred in the course of the investigation as to vitiate the proceedings, it would be competent to the Court, under its general powers of superintendence and control, to order the zillah judge to revise his proceedings with a view to the correction of the error observable in them, and to proceed in the case according to law.

The Presidency Court, on the 1st January, 1838, concurred in this construction.

From the Register of the Western Provinces to the Officiating Register of the Presidency Court of Sudder Dewanny Adawlut, dated 24th November, 1837.

No. 1114.

It is not competent to a judge to liberate a civil prisoner solely on the ground of illness, without the consent of the party at whose instance he was confined.

I am directed by the Court to request that you will submit, for the consideration of the Calcutta Court, the accompanying copy of a letter from the judge of zillah Juanpore, under date the 18th instant.

2. The Court observe that the law makes no provision for cases of the nature of that which forms the subject of Mr. Morrieson's reference; the only authority, however, possessed by the civil courts under the regulations of releasing a prisoner, confined in execution of a decree of court, is in cases coming under the provisions of Section 11, Regulation II. of 1806, where the insolvency of the prisoner may be clearly established in the mode prescribed in that enactment; and the Court are therefore of opinion, that it is not competent to a judge to liberate a civil prisoner solely on the ground stated in Mr. Morrieson's letter, unless with the consent of the party at whose instance he was confined.

The Presidency Court, on the 8th December, 1837, concurred in this construction.

From the Judge of Zillah Juanpore to the Register of the Sudder Dewanny Adawlut, Western Provinces, dated 13th November, 1837.

I request you will submit the following question for the consideration and orders of the Court. In the event of a prisoner confined in the civil jail being reported by the surgeon dangerously ill, and recommended for immediate removal, can the judge of his own authority on such an occasion, without the concurrence of the creditor, liberate him from confinement? An instance of this kind has lately occurred, and I allowed a court peon to accompany a prisoner home, and to remain with him there till his recovery or otherwise, as the only way of saving the man's life; but I doubt if I have acted altogether legally, and I shall be obliged by a communication of the Court's sentiments on this point for my future guidance.

November 24th, 1837.

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* See Construction No. 1055, dated 17th October, 1836.

From the Register of the Sudder Dewanny Adawlut, Western Provinces, to the Register of the Presidency Court, dated 24th November, 1837.

No. 1115.

Mode of proceeding in cases of resistance of process, when the process has been issued by one court, but executed within the jurisdiction of another.

I am directed by the Court to request that you will submit, for the consideration of the Calcutta Court, the accompanying copy of a letter from the judge of zillah Etawah, under date the 18th instant.

2. With regard to the first question referred by Mr. Davidson, the Court observe, that when the judge of one district may be called upon to aid the process of another zillah court, the practice is for him to back the same with his official signature, and to send one or more of the peons of his court to aid in its execution; and they are therefore of opinion, that in ordinary cases any resistance to such process must be considered as a resistance to the process of the court within whose jurisdiction it took place, and is cognizable as such by the judge of that court.

3. As respects the second question, the Court are of opinion that it will be sufficient to communicate to Mr. Davidson the construction adopted, with the concurrence of both Courts, on a reference from the commissioner of the Patna division, dated the 21st May, 1836,* wherein it was held, that as under the provisions of Sections 23 to 26, Regulation III. of 1803, the civil courts are fully competent and required to take cognizance of cases of resistance to their process and to dispose of them under the rules therein laid down, the reference of such cases to the magistrate could become necessary only when the resistance was attended with any act of violence so as to bring the matter properly within his cognizance, in which event the case would probably be brought direct to the notice of the magistrate, or so far as the judge was concerned, it would simply be necessary for him to make over the papers to that officer without passing any opinion or order thereon, and to request him to dispose of the case under the general Regulations. In cases of this nature, the Court observe that, upon the principle above laid down, the offence would of course be cognizable by the magistrate, within whose jurisdiction it was committed, without reference to the court from which the process issued.

4. Should the Calcutta Court concur in the foregoing opinions, the Court propose to communicate them to the judge of Etawah, in reply to his letter under consideration.

From the Judge of Zillah Etawah to the Register of the Sudder Dewanny Adawlut, Western Provinces, dated 18th November, 1837.

May I beg the favor of your obtaining for me the orders of the Court on the two following questions of procedure:

1st.—On process being issued by the civil court of another district and served by its peons within the jurisdiction and by the aid of this court afforded through its peons, should resistance of process take place within the jurisdiction of this court, are the offenders amenable for the act of resistance solely to the original court issuing the process or to that

* See Construction No. 1033, 12th August, 1836.

21 Nov. } 1837.
1 Dec. }

within whose jurisdiction the offence occurs and whose peons whilst aiding in the service are also resisted ?

2. In the event of the original court having solely cognizance of such a case of resistance of its process, I beg to know whether the resisting parties be also liable to a criminal prosecution for an act of assault committed on the peons of this court.

The Presidency Court, on the 8th December, 1837, concurred in this construction.

November 24, 1837.

From the Register of the Western Provinces to the Officiating Register of the Presidency Court of Sudder Dewanny Adawlut, dated 8th December, 1837.

No. 1116.
1814 Reg. II. 1829 Reg. X. Schedule B. Article 8.

I am directed to request that you will submit, for the consideration of the Calcutta Court, the accompanying copy of a letter from the judge of Bundlekhund, under date the 29th ultimo, requesting the opinion of the Court as to the stamp paper which should be used for petitions of complaint preferred, agreeably to the provisions of Regulation II. of 1814, against the officers of Government in their official capacity.

2. The Court observe that the Regulations make no exception in favor of such petitions, and they are, therefore, of opinion that it was intended they should be written, when first presented, on stamp paper of the value in like manner with all other plaints.

The Presidency Court concurred in the above construction.

December 8*th*, 1837.

From the Register of the Western Provinces to the Officiating Register of the Presidency Court of Nizamut Adawlut, dated 8th December, 1837.

No. 1117.
1837. Act XIX.

I am directed to request that you will submit, for the consideration of the Calcutta Court, the accompanying copy of a letter from the session judge of zillah Juanpore, under date the 29th ultimo, soliciting the opinion of the Court as to whether, under the provisions of Act XIX. of 1837, the evidence of a convicted prisoner is admissible against his accomplices in the same case.

2. The Court direct me to observe that the wording of the enactment in question is so general, that they are of opinion it was intended to include cases of the nature of that which forms the subject of Mr. Morrieson's reference, and that consequently, under its provisions, the conviction of a person of a criminal offence cannot be considered as constituting a bar to his giving evidence against his supposed accomplices in the same crime, it resting of course with the presiding officer, as in all other cases, to judge of the credibility of such testimony, or, in other words, to receive it "quantum valeat."

From the Session Judge of Zillah Juanpore to the Register of the Nizamut Adawlut, Western Provinces, dated 28th November, 1837.

As directed in the 6th paragraph of your letter No. 1420, of the 22d instant, I have the honor to request that you will obtain for me the opinion of the Nizamut Adawlut on the following point.

2. A case of dacoity was lately tried at the sessions for September last, in which the magistrate inserted in his calendar, as witnesses, the names of two prisoners confined in jail who had been previously convicted for the same crime and in the same case. In their confessions they took the name of the prisoner subsequently under trial, as having been concerned with them, and swore to his identity.

3. At the trial the law officer objected to admit such evidence, and I was of opinion that the testimony of a prisoner who had been convicted on the same charge and for the identical offence, could not avail to substantiate the guilt of another person as an accomplice in the same crime. I thought it tantamount to making a man a defendant and a witness in the same case. The magistrate however seemed to be of a different opinion, and as it may be questionable whether under the late Act, XIX. of 1837, such testimony is admissible or not, it would be satisfactory to me if the Nizamut Adawlut would favor me with their sentiments on the point for my future guidance.

The Presidency Court, on the 5th January, 1838, concurred in this construction.

December 8th, 1837.

From the Register of the Western Provinces to the Officiating Register of the Presidency Court of Sudder Dewanny Adawlut, dated 15th December, 1837.

No. 1116.
1831.
Reg V. Sec. 20. 1832.
Reg. VII. Sec. 3. 1837.
Act XXV.

I am directed by the Court to request that you will submit, for the consideration of the Calcutta Court, the accompanying copy of a letter from the judge of Benares, No. 267, under date the 8th instant, regarding the stampt paper to be used for pleadings in cases referred to the principal sudder ameens under the provisions of the 1st Section of Act XXV. of 1837.

2. The Court observe that under the rule contained in Section 20, Regulation V. of 1831, the pleadings in all cases up to 5000 rupees in amount or value, referred for trial and decision to the principal sudder ameens, are required to be written on stampt paper of one rupee value: and as Act XXV. of 1837, in enlarging the powers of those officers makes no provision on the point under reference, they are of opinion that as the law now stands, the same rule must be held to apply in respect to cases made over to the principal sudder ameens under Section 1 of that enactment.

3. With regard to Section 3, Regulation VII. of 1832, referred to by Mr. Mainwaring, the Court remark that the provisions of that Section are applicable only to the courts of the zillah and city judges, and they are of opinion that the enhanced rate of stamps thereby prescribed for the pleadings in those courts in certain cases could not be extended to the courts of the principal sudder ameens without a specific enactment.

From the Judge of the City of Benares to the Register of the Sudder Dewanny Adawlut, Western Provinces, dated 8th December, 1837.

By Section 3, Regulation VII. of 1832, pleadings in the courts of zillah or city judges under Regulation V. of 1831, are to be written on paper of the value of four rupees, except in original suits for property not exceeding in value or amount one thousand rupees, in which case they are to be written on stampt paper of only one rupee value.

2. By the operation of Act XXV. of 1837, the pleadings that have, under the rule above quoted, been written on paper of only one rupee value, involving a very considerable loss to Government, I beg to bring this to the notice of the superior Court, and to be informed if it is intended that all pleadings in cases before the principal sudder ameen, without reference to amount, are to be received, as cases of limited amount have heretofore been, on stampt paper of the value of one rupee.

The Presidency Court, on the 5th January, 1838, concurred in this construction.

December 15th, 1837.

From the Officiating Register of the Presidency Court to the Register of the Sudder Dewanny Adawlut, Western Provinces, dated 15th December, 1837.

No. 1118. 1810. Reg XX.

I am directed by the Court to request that you will lay before the judges of the Court of Sudder Dewanny Adawlut for the Western Provinces, the accompanying copy of a letter from the commissioner of the 11th division, dated the 16th ultimo, No. 1039, with its enclosures.

2. The Court propose, with the concurrence of the Agra Court, to inform the commissioner, that in their opinion it was not competent to the magistrate under the provisions of Regulation XX. of 1810, to pull down houses in a military cantonment and eject their possessors merely on the requisition of the officer commanding the station.

The Western Court, on the 29th December, 1837, concurred in this construction.

December 15th, 1837.

From the Officiating Register of the Presidency Court to the Register of the Sudder Dewanny Adawlut, Western Provinces, dated 15th December, 1837.

No. 1120. 829. Reg. X. Sec. 18.

I am directed by the Court to request that you will lay before the judges of the Court for the Western Provinces, the accompanying copy of a letter from the officiating judge of Sylhet, dated the 29th ultimo, No. 26.

2. The Court propose to inform the officiating judge, with the concurrence of the Agra Court, that in their opinion it is not optional with a judge to remit the fine which is declared by Section 18, Regulation X. of 1829, to attach to parties filing papers contrary to the provisions of that enactment.

1120--1121.

15 } Dec. 1837.
29 }

From the Officiating Judge of Zillah Sylhet to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 29th November, 1837.

I have the honor to request the instructions of the Court whether I am competent to remit the penalty declared in Section 18, Regulation X. 1829, being assured that a stamp of inadequate value filed in a case, is filed under circumstances which leave no doubt that the filing party was ignorant of the inadequacy of its value.

From the Register of the Western Provinces to the Officiating Register of the Presidency Court of Sudder Dewanny Adawlut, dated 12th January, 1838.

I am directed to acknowledge the receipt of your letter, No. 3781, under date the 15th ultimo, with its enclosure, from the officiating judge of zillah Sylhet, and in reply to state that the Court concur with the Calcutta Court in the opinion that Section 18, Regulation X. of 1829, gives no discretion to the presiding officer, but that he is bound in all cases to levy the fine, therein prescribed, from any vakeel or authorized pleader or mookhtar, who may file any paper contrary to the provisions of that enactment.

From the Register of the Western Provinces to the Officiating Register of the Presidency Court of Sudder Dewanny Adawlut, dated 29th December, 1837.

No. 1121.
Circular Order, No. 216, Vol II 27th October, 1837.

I am directed to request that you will submit, for the consideration of the Calcutta Court, the accompanying copy of a letter from the judge of zillah Mynpoorie, No. 44, under date the 9th instant, relative to the circular of the 27th October last, which originated with the Calcutta Court, on the subject of security bonds.

2. Mr. Begbie, it will be observed, considers the construction laid down in the circular in question, opposed to that contained in the letter written to the judge of the Jungle Mehals, under date the 21st June, 1821, No. 341, of the printed construction book.

2. The Court direct me, however, to remark that the construction adverted to by Mr. Begbie, referred to the case of a person becoming security for the payment of a sum of money, and affixing his signature to the bond in recognition of his liability equally with the principal for the amount, the transaction being as it were a joint one, in which case it was held by the Court that it was not necessary to the admissibility of an action against the surety that he should have entered into a regular security bond on separate stampt paper of the same value as that of the original obligation; whereas the present construction has reference to a formal security bond executed on the same paper as the original instrument, which the Court have declared is not admissible under the stamp regulations as evidence against the surety: the two cases are, therefore, quite distinct, and the constructions are not, as supposed by Mr. Begbie, at variance with each other.

From the Judge of Zillah Mymporie to the Register of the Sudder Dewanny Adawlut, Western Provinces, dated 9th December, 1837.

I have the honor to acknowledge the receipt of your circular letter, No. 1410, under date 27th October last, on the subject of security bonds, and with reference to the instructions therein conveyed I beg to submit that the opinion now expressed seems to be opposed to that contained in the letter to the address of the acting judge of Jungle Mehals under date 1st June, 1821, (No. 341, book of constructions), wherein it is declared that it is not necessary for a surety to enter into a regular security bond on separate stampt paper of the same value as that of the original obligation, but that by affixing his signature to the original deed he may be sued jointly with the principal in the deed.

The Presidency Court, on the 2d February, 1838, concurred in the construction.

December 29th, 1837.

To the Register of the Nizamut Adawlut, Western Provinces, dated 29th December, 1837.

No. 1122.

A session judge is not competent to cancel a commitment merely on the ground of the evidence, as shewn by the calendar appearing insufficient for conviction.

I am directed to request that you will submit the accompanying copy of a letter, No. 47, dated the 5th instant, from the session judge of zillah Rungpore, for the consideration and opinion of the judges of the Western Court, in regard to the correctness or otherwise of that officer's proceeding.

2. The majority of this Court are of opinion that the judge was not competent to annul the commitment without following it up with ulterior measures, and that he ought to have tried and acquitted the prisoner if the charge was not established against him. On the other hand Mr. Hutchinson holds that in the total absence of all legal and satisfactory evidence, the annulment of the commitment was within the competency of the session judge, as without evidence a trial cannot be held.

From the Session Judge of Zillah Rungpore to the Register of the Presidency Court of Nizamut Adawlut, dated 5th December, 1837.

In conformity with the circular order of the Court of Nizamut Adawlut, No. 111, of the 20th July, 1832, I beg leave to report the following reason for cancelling a commitment* made by the officiating joint magistrate of Bugoora, on the 18th November, 1837.

* Case No. 2 of the Calendar for November, 1837.
Maloo Momin, servant of Burjoonder Puksasee, zemindar, versus
Bubra.....Prisoner.
Charge—decoity, attended with murder.

2. In the 14th column of the English calendar the abstract of the grounds for the commitment of the prisoner is his "being inculpated as an accomplice by the already sentenced prisoners;* the circumstance of absconding from process, and the contradictory and improbable nature of the exculpatory evidence adduced," and by the proceedings, he does not appear to have been named by the prosecutor or witness; and there are no witnesses for the prosecution.

* In this case five prisoners were convicted of decoity attended with murder, and sentenced by the Nizamut Adawlut on the 23d November, 1836, to imprisonment for life with labor and irons in the jail at Allpore.

1122.
29 December, 1837.

From the Register of the Western Provinces to the Officiating Register of the Presidency Court of Sudder Dewanny Adawlut, dated 19th January, 1838.

I am directed by the Court to acknowledge the receipt of your letter, No. 3823, under date the 29th ultimo, with its enclosure, from the session judge of Zillah Rungpore, relative to the case of the prisoner named in the margin.*

* Bebve, prisoner—charge decoity, attended with murder

2. In reply, I am directed to state that under the circumstances of the case, as reported by the session judge, the Court are clearly of opinion with the majority of the Calcutta Court, that it was not competent to that officer to cancel the commitment, but that he should have proceeded to put the prisoner regularly on his trial and to pass sentence of acquittal upon him, including the case, in the usual form, in his monthly sessions statements, and reporting therein his opinion in respect to the propriety or otherwise of the commitment, as required by the circular orders of the 8th May, 1829.

December 29th, 1837.

END OF VOLUME II.

Calcutta:—*C. H. Huttmann, Bengal Military Orphan Press.*

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CONSTRUCTIONS'

OF THE

REGULATIONS OF GOVERNMENT

BY THE COURTS OF

Sudder Dewanny and Nizamut Adawlut.

No 1123
1814
Reg XXVI Sec 4.

On a reference from the judge of Tirhoot, it was held by the Calcutta Court, in concurrence with the Western Court, that a judgment passed by an additional judge during the time he officiated for the judge of the district, is to be reviewed by the former if still attached to the district, and not by the judge.

December 29th, 1837.

No 1124
1790
Reg XI
1817
Reg XX Sec 26

A prisoner was charged with plunder, and acquitted by the magistrate. On appeal to the sessions court, the magistrate's sentence was reversed, and the prisoner was sentenced to fine and imprisonment. He appealed to the Nizamut Adawlut, which Court ultimately confirmed the order of the session judge, directing however, on the appeal being preferred, that the prisoner should be admitted to bail till the receipt of the Court's decision. He absconded, and the bail was forfeited. Held by the Calcutta Court, in concurrence with the Western Court, that his property was not liable to forfeiture under the provisions of Regulation XI. 1796, and Section 26, Regulation XX. 1817, which are applicable only to persons *charged* with a crime but not convicted, and that he must be proceeded against as an absconded convict.

December 29th, 1837.

No. 1125
1829
Reg XVII
Sec 4 Cl 2.

Held by the Calcutta Court, in concurrence with the Western Court, that Clause 2, Section 4, Regulation XVII. 1829, which prescribes the punishment for the offence of aiding and abetting in the commission of suttee, being silent in regard to labour, and it being necessary to interpret penal enactments literally, a session judge is not competent to sentence a person convicted of the above offence to labour in addition to imprisonment.

January 22d, 1838.

No. 1126.
1793.
Reg. IV. Sec. 6.

In a regular suit, in which the witnesses named by the plaintiff had been duly summoned, but had neglected to attend under the summons and give their evidence as required, it was held by the Calcutta Court, in concurrence with the Western Court, that it was incumbent on the judge, under the spirit of Section 6, Regulation IV. 1793, to call on the plaintiff's counsel to satisfy him by evidence on oath, that these witnesses were material to the cause; and that he ought not to have struck the case off the file, until he had explicitly called upon the party to proceed in the manner above indicated.

January 26th, 1838.

No. 1127.
Calculation of the time allowed for an appeal in a regular suit when a review of judgment has been applied for to the court of decision and rejected.

Held by the majority of the Western Court, in concurrence with the majority of the Calcutta Court, that a party having applied for a review of judgment, under the provisions of Clause 2, Section 4, Regulation XXVI. 1814, in a case open to appeal, but in which no appeal may have been preferred, and such application having been rejected, is not entitled of right to the deduction of the time, during which his application for a review was pending before the lower court, in calculating the period allowed him under the Regulations for preferring a regular appeal from the original decision: but that where such party may plead as the reason of his not having presented his petition of appeal within the period prescribed by law, that the case was pending before the lower court on an application for a review of judgment, it will be the duty of the appellate court to take such plea into consideration, and to admit it or not, according as, under all the circumstances of the case, it might appear just and proper, in like manner with any other cause assigned for delay.

February 2d, 1838.

The following Extract from a Note, laid before the Calcutta Court by their Register on the 5th February, 1838, *embodies the substance of the several constructions which have been adopted on the subject of the jurisdiction of the Civil Courts in regard to Lands under settlement by the Revenue authorities under the provisions of Regulation IX.* 1833.

No. 1128.
1833
Reg. IX.
Jurisdiction of the civil courts in regard to lands under settlement by the revenue authorities under the provisions of the above regulation

Para. 4. The first reference formed the subject of the letter of the Western Court, No. 33, dated 4th December, 1835. The question mooted for opinion was as follows: "A suit is instituted regarding a boundary dispute between two villages, and an ameen is deputed to make local enquiries. Before the decision is given the collector decides the disputed boundary: can the court interfere in this decision; or does it bar any investigation of the merits of the case?" The two Courts concurrently ruled* that under the circumstances stated, there was nothing which should operate to interrupt the progress of the suit, or prevent it taking its course.

* Calcutta Court's letter No. 31, dated 2d January, 1836.

5. The second reference was that of the Agra Court's letter No. 41, dated 11th December, 1835. It arose out of a collision of jurisdiction between the judge of Gorukhpore

and the settlement officer appointed under the provisions of Regulation IX. 1833, in certain parts of that district. In this instance it was held by both Courts,* that it was not competent to the settlement officer to interfere with regard to awards of court given previously to the period of his appointment, unless by order of the court, or with the consent of the parties.

* Calcutta Court's letter No. 93, dated 9th January, 1836.

6. The third case was forwarded for the opinion of this Court with the letter of the Western Court No. 1075, dated 16th December, 1836. The reference of the judge of Ghazeepore was to the following effect:—"A case of disputed boundary between two contiguous estates under settlement is litigating in the moonsiff's court, and still undecided, when the settlement officer proceeds under the authority vested in him by Sections 6 and 7, Regulation IX. 1833, to appoint a punchayet by drawing lots. In the mean time the moonsiff gives a decree in favor of one party, and the arbitrators base their award on the said decree, acting upon which the collector marks off his boundary, and concludes his settlement. Such being the case, is it competent to the judge to entertain the question in appeal from the moonsiff's decision, with the chance of course of reversing the arbitration award, or is he precluded from interference by Section 9, Regulation IX. 1833?" The Western Court proposed to reply that there was nothing in the explanation to operate to prevent the appeal taking its course.

7. In this opinion that Calcutta Court* did not originally concur. They observed that the award of the punchayet, and the decision of the collector thereon, being subsequent to the date of the moonsiff's decree, the award could not be affected by any order the judge might pass on the trial of the appeal: and that the appeal being in fact a suit brought to set aside the collector's decision must be non-suited with costs under the rule contained in Section 9, Regulation IX. 1833.

* Calcutta Court's letter No. 261, dated 27th January, 1837.

8. The Western Court in their letter No. 1105, dated 15th September last, requested that this Court would re-consider the reference. They forwarded further correspondence on the subject of the particular case previously referred, and of other similar cases. They entered at large into the consideration of the subject: and in the 3d paragraph of their letter observed as follows:—

"The following general questions appear to arise out of the present correspondence, which it seems desirable to determine for the future guidance of the judicial and revenue officers, and with a view to define the jurisdiction to be exercised by those authorities respectively in cases of the nature of those under reference.

1st.—Is it competent to a revenue officer, engaged in making settlements under the provisions of Regulation IX. 1833, or any other enactment, to interfere in regard to any case pending before any court of civil judicature at the date of settlement, either as an original suit or in appeal?

2d.—Is it competent to such officer to interfere, under the provisions of the above-mentioned regulations, in regard to any case which may have already been judicially determined by a court of civil judicature, either as an original suit or in appeal?

3d.—Does any limitation of time exist under the regulations, in regard to the cognizance by the revenue officers of disputed private claims brought before them under the provisions of Regulation IX. 1833; or is it competent to those officers to take cognizance of all cases of that nature without reference to the date of the cause of action, which at the time of settlement may not be depending before any court of civil judicature, or which may not have already been judicially determined by a court of competent jurisdiction?"

9. The Western Court were of opinion that it was not competent to the revenue officers to exercise the powers described in the first question, unless the parties should themselves apply by petition for the removal of their cause to the court of the settlement officer, with a view to its being decided under the provisions of Sections 5 to 8, Regulation IX. 1833.

The Court were further of opinion that the second question must also be determined in the negative, unless the interference took place by order of the court, or with the consent of the parties.

In regard to the third question the Western Court ruled that no case could be tried by the revenue officers, in which the cause of action may have arisen more than one year previous to the complaint, and that only such cases could be taken up by them as regards the extent of interest of parties in possession, and the decision of which was necessary to the due allotment of the Government jumma, leaving all old and extraneous claims to the decision of the courts: such opinion being in conformity with instructions issued by the Sudder Board of Revenue to the subordinate revenue authorities.

10. On a re-consideration of the whole subject the Calcutta Court concurred in the above opinions as expressed in their letter to the Western Court, No. 3444 of the 3d November last.

No. 1129.

Miscellaneous orders passed in the execution of a decree, carrying into effect the original intentions of the court, are not open to dispute by a regular suit.

Held by the Western Court, in concurrence with the Calcutta Court, that any order passed in the execution of a decree in regard to mesne profits, interest or other matter in dispute between the parties to the suit, which may be involved in the decision, must be looked upon as a necessary process for carrying into effect the original intentions of the court passing the decree, in respect to a point, in which it may, in fact be said already to have pronounced a formal judgment, and cannot, therefore, be considered as constituting a new cause of action.

February 9th, 1838.

No. 1130.

Reg. V Sec. 5, Cl. 1.

Held by the Calcutta Court, in concurrence with the Western Court, that a zillah judge has no summary jurisdiction under the provisions of Clause 1, Section 5, Regulation V. 1830, in the case of an application by a ryot to settle his accounts with an indigo factory, before the expiration of his contract. A summary decision of the judge of Rajshahye in a case of this nature, was quashed by the Court on a summary appeal.

February 9th, 1838.

To the Session Judge of Zillah Behar, dated 16th February, 1838.

No. 1131.
Punishment to which a burkundaze is liable for gross neglect of duty in conniving at the escape of a convict

The Court having had before them two letters* from the commissioner of the 11th division on the subject of the punishment to which a burkundaze is liable under the regulations for a gross neglect of duty, in conniving at the escape of a convict, desire me to request that you will direct the magistrate's attention to construction No. 206, dated 25th May, 1815, page 66, volume I. construction book, from which it will be seen that a burkundaze convicted of the offence alluded to is punishable by fine and imprisonment under the sentence of the magistrate, agreeably to the provisions of Section 19, Regulation IX. 1807. Should the magistrate however be of opinion that the sentence he is thereby authorized to pass is inadequate to the offence of which the prisoner is convicted, he must proceed to commit him under the rule laid down in Section 6, Regulation II. 1799.

* No. 745, dated 26th September, 1837.
No. 1209, dated 12th December 1837, with their respective enclosures from the magistrate of Behar.

February 16*th*, 1838.

From the Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, under date the 16*th February,* 1838.

No. 1132.
1814
Reg. XXVIII. Sec. 8.

A question having arisen in a case, now depending before the Court, as to whether an application from a pauper appellant to stay the execution of the decree given against him, pending the appeal, is admissible on plain paper, I am directed to request that you will submit the point for the consideration of the Calcutta Court.

2. The Court are of opinion, that as applications of the nature of that abovementioned, are not included amongst the exceptions, contained in Section 8, Regulation XXVIII. of 1814, which distinctly specifies the description of papers on which the stamp duties are to be remitted to paupers, they must be drawn out on stampt paper of the value prescribed for petitions presented to the courts in which they may be filed. The Court direct me to add that this principle has already been acted upon in regard to vakalutnamehs where the pauper may himself appoint a vakeel, as well as in respect to security bonds filed under Section 6, Regulation XXVIII. of 1814, and it appears to them equally applicable to petitions presented to the Court for the purpose before stated. The Court propose accordingly to adopt it as a rule of future practice.

The Presidency Court, on the 9*th March,* 1838, *concurred in this construction.*

February 16*th*, 1838.

From the Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 16*th February,* 1838.

No. 1133.
Mode of proceeding in regard to the decree of a foreign court

An appeal having been presented to the Court from an order passed by the judge of zillah Mirzapore, in regard to the attachment and sale of a house, situated within the limits of his jurisdiction, in execution of a decree passed by a court of civil judicature in

16 Feb. — 2 March, 1838.

or a decree passed in an extra regulation jurisdiction, when the decree-holder desires to sue out execution against property situated in any of the regulation districts.

the Saugor and Nerbudda Territories, to which the civil Regulations of the British Government have not been extended, a question has arisen whether it was competent to the judge to exercise any interference in the matter, and I am directed, therefore, to request that you will submit the point for the consideration of the Calcutta Court.

2. The Court observe that on a reference being made to the advocate general under date the 27th June, 1809, to ascertain whether any and what measures could be adopted in the case therein mentioned, to recover from the defendant, who had proceeded to England, the amount of a decree given against him by the Court of Sudder Dewanny Adawlut at Calcutta, the following opinion was obtained from that officer: "A foreign "judgment is, generally speaking, considered as a prima facie ground of action in our "courts, and the judgments of courts in the colonies and dependencies are to this pur-"pose upon the same footing in the courts in England with foreign judgments. If "however a foreign judgment should appear on the face of it to be erroneous, it will not "support an action, as we only profess to give effect to those judgments, where they "are conformable to justice, and the general principles of law, which is presumed till the "contrary appears. The proper course for the appellants under the general rule would "be to transmit an exemplification of the judgment of the Sudder Dewanny Adawlut, "and of the whole proceedings in the cause under the seal of the Court, and the signa-"tures of the judges, with proper powers of attorney, to some person in England to "institute a suit on the judgment of the Sudder Dewanny Adawlut against the "respondent."

3. It appears to the Court that the same principle is equally applicable to the case which has given rise to the present reference; and they propose, in the event of the Calcutta Court concurring in this opinion, to act upon it accordingly in disposing of the appeal now before them, by setting aside, as illegal, the whole of the proceedings held by the judge of Mirzapore, and intimating to the decree-holder that he is at liberty to institute a suit in that court against the opposite party, founded on the judgment passed in his favor by the civil court in the Saugor and Nerbudda Territories.

Adopted in concurrence with two of the Judges of the Calcutta Court.

February 16th, 1838.

From the Officiating Session Judge of Zillah 24-Pergunnahs to the Register of the Presidency Court of Nizamut Adawlut, dated 13th January, 1838.

No. 1134.

1838. Act VII. Circular Order. Nizamut Adawlut. No. 340, July 21st, 1837.

Ramnarain Doss *versus* Issurchunder Boanerjee, late darogah of Thannah Chitpore.

A case of bribery and extortion which was thrown out by the magistrate of the 24-Pergunnahs, has been appealed to me.

2. I request to be favored with the Court's opinion and instruction on the following queries, to remove all doubts as to the extent of the order of the Right Honorable the Governor of Bengal, contained in the Superior Court's letter circular of the 21st July, 1837.

Query 1st.—Does the above letter remove cases of committal of police officers for bribery from the session judge to the commissioners?

Secondly.—Is the order of the magistrate in the above case and similar appeals open to any revision, and have I power to order the magistrate to commit in such cases?

To the Officiating Session Judge of Zillah 24-Pergunnahs, dated 2d March, 1838.

I am directed to state that the Court are of opinion that the circular order dated 21st July, 1837 (which has been partially superseded by Act XXIV. 1837,) does not remove cases of committal of police officers for bribery from the session judge to the superintendent of police.

2. In reply to the question contained in your letter No. 8, of the 13th January last, the Court are of opinion that appeals of the nature alluded to are open to your revision, and that you have the power as session judge to order the magistrate to commit in such cases.

The Western Court, on the 16th February, 1838, concurred in this construction.

March 2d, 1838.

Extract of a Letter from the Register of the Presidency Court to the Judge of Zillah Chittagong, dated 2d March, 1838.

Para. 1. I am directed by the Court to state that in their opinion the salt authorities are empowered by Sections 110, 111 and 115, Regulation X. 1819, to award either of two penalties, viz. a fine, or imprisonment in commutation of the same, according to the scale laid down in Section 110. The judge therefore who enforces the order in cases where the fine does not exceed fifty rupees, and judicially disposes of the cases where the fine exceeds that amount, must proceed to realize the fines by the usual process of execution. If the fine is forthcoming before the defendant is committed to jail, the case is concluded: if forthcoming after commitment to jail, the case is likewise disposed of, and the prisoner must be immediately released: if the fine be not forthcoming, the person fined must undergo the prescribed period of imprisonment in commutation, and the levy of the fine is then barred, that is, the fine is not demandable after the imprisonment has been undergone, and the party released.

No. 1135.
1819
Reg X.
Secs. 110, 111, 115.

Majority of the two Courts concurred.

March 2d, 1838.

To the Officiating Session Judge of Dinagepore, dated 9th March, 1838.

The Court having had before them your letter No. 266, dated the 26th ultimo, direct me to inform you, that it is competent to you to issue orders for the payment to police officers of the commission on the value of stolen property recovered by them, which is authorized by Clause 17, Section 16, Regulation XX. 1817.

No. 1136.
1817
Reg XX.
Sec. 16, Cl. 17.

March 9th, 1838.

Extract of a letter from the Register of the Presidency Court to the Register of the Nizamut Adawlut, Western Provinces, dated 9th March, 1838.

No. 1137.

A prisoner admitted as an evidence should be examined de novo, and not be merely sworn to the truth of the statement made by him as a defendant.

Para. 1. An instance having been brought to the notice of the Court in which a magistrate, after taking the confession of a prisoner during the preliminary investigation of a case committed for trial to the Sessions Court, admitted him as an evidence by merely swearing him to the truth of his former confession, I am directed to request that you will submit the question of the legality of such a proceeding for the consideration and opinion of the judges of the Western Court.

2. The majority of the Court hold that the practice is irregular and illegal; and that the prisoner standing in quite a different position as an approver, should be examined *de novo*, instead of being merely sworn to the truth of a statement made by him in the character of a defendant.

From the Register of the Western Provinces to the Register of the Presidency Court of Nizamut Adawlut, dated 24th March, 1838.

I am directed to acknowledge the receipt of your letter, No. 680, under date the 9th instant, and in reply to state, that the Court are unanimously of opinion with the majority of the Calcutta Court, that in the case described in your letter, the magistrate's proper course was to have taken the examination of the individual therein referred to *de novo* instead of swearing him to the truth of the statement alleged to have been made by him in the character of a defendant during the preliminary investigation of the case.

March 9th, 1838.

No. 1138.

1796. Reg. XIII. Sec. 3.

No. 1139.

1814. Reg. XXVI. Sec. 2.

Circular Order, S. D. Adawlut, No. 33, Nov. 5, 1812.

Applications for the admission of special appeals to be considered as miscellaneous petitions until the appeal has been admitted: notice prescribed by circular order of the 5th Nov. 1812, not necessary in such cases.

A copy of the decree appealed against should always accompany a petition of special appeal.

On a reference from the judge of Chittagong, it was held by the Calcutta Court, in concurrence with the Western Court, that it is not competent to a zillah judge to impose a fine under the provisions of Section 3, Regulation XIII. 1796, on the appellant in a miscellaneous case, the rule therein laid down not being applicable to such appeals.

March 16th, 1838.

On a reference from the judge of Tirhoot, it was held by the Calcutta Court, in concurrence with the Western Court, that a petition of special appeal, until the appeal has been admitted, is to be viewed as a miscellaneous petition, and that consequently it is not necessary in such cases to issue the notice prescribed by the Circular Order No. 33, of the 5th November, 1812, which refers to suits admitted and pending.

2. Held further that a copy of the decree appealed against must always accompany the application for the admission of a special appeal.

March 23d, 1838.

1140
23 March, 1838

From the Officiating Additional Judge of Tirhoot to the Officiating Register of the Presidency Court of Sudder Dewanny Adawlut, dated 9th December, 1837.

No. 1140.
1806
Reg XVII, Sec. 8.

I beg to solicit the opinion of the Court of Sudder Dewanny Adawlut on the following point.

2. A suit is instituted by A, for the possession of certain landed property which had been mortgaged to him by B. Previous to the institution of suit the usual petition under Section 8, Regulation XVII. 1806, was presented by A, and the notice required by that enactment duly served on the seller, who failed to deposit the amount demanded within the prescribed period. B, in his defence, admits the execution of the deed of mortgage, but alleges that the amount therein specified was not justly due, inasmuch as A, taking advantage of his necessities when he applied to him for the loan of the money, demanded a higher rate of interest than the legal one, and prevailed upon him to sign a deed in which a large amount of interest *in advance* at the above illegal rate, together with other unjust charges, were included in the *principal*, upon which the legal rate of interest was stipulated to be paid. He accounts for his not having deposited the amount when called upon to do so under Section 8, Regulation XVII. 1806, by asserting that he was prevented doing so by A, who till the very last deceived him by the promise of making an equitable adjustment of their accounts and of not claiming possession of the mortgaged property.

3. Under such circumstances is the court competent, under the general spirit of the regulations, to enquire into the plea advanced by the seller with regard to the amount not being justly due, and to decide accordingly? or is it bound to consider the sale absolute, if it is proved that the rules laid down in Section 8, Regulation XVII. 1806, were duly observed, and that the seller failed to pay the amount within the prescribed period? It would appear from the circular orders of the 22d July, 1813, that the seller is not *bound* to pay the amount demanded should he dispute its correctness, and as the judge has no authority under the above Section to enquire into the authenticity of the deed, the defendant B may have considered it unnecessary to deposit the amount under the idea that he would be at liberty to dispute the demand when A filed his suit for possession. I find that on the 28th February, 1834, a somewhat similar case to the above, viz that in which Parusnath Chowdry was appellant and Lalla Peiareh Lal was respondent, was decided by the Sudder Court, in which the purchaser's claim was dismissed on the grounds of the amount not being justly due, notwithstanding that the usual notice under Section 8, Regulation XVII. 1806, was issued. It apppears however to have been doubtful in that case whether the seller received the notice or not.

4. I also wish to be informed whether, under the above circumstances, the court could issue a further notice to the seller calling on him to make good the amount within a reasonable period.

To the Judge of Zillah Tirhoot, dated 23d March, 1838.

I am directed to inform you, with reference to the 2d and 3d paragraphs of Mr. Gouldsbury's letter, No. 63, dated the 9th December last, that in a suit brought by a

mortgagee for the foreclosure of a mortgage, it is competent to the court in which the suit was preferred to enquire whether the transaction was an illegal one *ab initio*, and to decide accordingly.

2. With regard to the question in the 4th paragraph of the letter adverted to, the Court are of opinion that if it was proved that the notice was not duly issued to the mortgagee, the plaintiff ought to be nonsuited, leaving him to apply for the issue of the prescribed notice.

The Western Court, on the 2d March, 1838, concurred in this construction.

March 23d, 1838.

No. 1141.
1819.
Reg. VII. Sec. 4.

On a reference from the magistrate of Patna, it was held by the Calcutta Court, in concurrence with the Western Court, that the provisions of Section 4, Regulation VII. 1819, are not applicable to European British subjects as defendants.

March 23d, 1838.

No. 1142.

On a reference from the magistrate of Nuddea, held by the Calcutta Court, in concurrence with the Western Court, that the power of hearing appeals from the jailor and other subordinate officers of the jail is by Section 7, Act XXIV. 1837, vested in the session judge.

March 23d, 1838.

Extract of a Letter from the Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 24th March, 1838.

No. 1143.
1829
Reg. X. Schedule B Art. 8.

I am directed to request that you will submit, for the consideration and opinion of the Calcutta Court, the following point of law involving a construction of Article 8, Schedule B, Regulation X. of 1829, which has arisen in an appeal now depending before the Court.

2. The Government, having resumed a jagheer, situated in the district of Benares, concluded a zumeendaree settlement of it with the jagheerdar for a term of years; another party claiming the proprietary right of the estate, has brought the present suit to establish the same, and the question that arises is as to the manner in which he should value his claim; whether at the annual jumma at which the estate has been assessed, or at three times the amount, or, under the general rule contained in part 4 of the note annexed to the article in question, according to the estimated selling price.

3. The Court observe, that the first part of the note abovementioned, merely declares, that in suits for lands situated in the ceded or conquered provinces, including Cuttack, the value shall be assumed at the amount of the annual jumma, or where the land may have been assessed in perpetuity, at three times the amount of the annual

summs, but makes no provision for cases of the nature of that in point, where the land is neither situated in the ceded or conquered provinces, nor permanently assessed. It appears, however, to the Court to be a fair and equitable principle to observe in such cases the distinction laid down in the first part of the note above cited, the reasons of which are obvious; and they propose, should the Calcutta Court concur in this opinion, to act upon it accordingly in disposing of the appeal now before them.

The Presidency Court, on the 6th April, 1838, concurred in this construction.

No. 1144. 1810. Reg. VI.

On a reference from the session judge of Midnapore, held by the Calcutta Court, in concurrence with the Western Court, that as the magistrates' acts, in the management of ferries, are subject to the control of the superintendent of police, it is not competent to a session judge to receive appeals from the magistrate's orders in such matters.

April 6th, 1838.

From the Register of the Western Provinces to the Register of the Presidency Court of Nizamut Adawlut, dated 6th April, 1838.

No. 1145. 1837. Act XXIV. Secs. 5 and 7.

A reference having been made to the Court, involving the question as to whether the provisions of Sections 5 and 7, Act XXIV. of 1837, are now in force in these provinces, notwithstanding that a superintendent of police has not as yet been appointed to them under the 1st Section of that Act, or whether their operation is contingent upon such appointment, I am directed to request that you will submit the point for the consideration and opinion of the Calcutta Court.

2. The Court observe, that there is nothing in either of the Sections, in question, to indicate that their introduction, as regards either the Lower or Western Provinces, is dependent upon the appointment of a superintendent of police; on the contrary, from the wording of the concluding Section of the Act it would appear to have been the intention of the legislature, that the provisions of it, except as respects that part which authorizes the Government to make such appointment, should under any circumstances come into operation from the 1st January, 1838, in those districts in which the whole administration of criminal justice may have been transferred under Act VII. of 1835, from the commissioners of circuit to the session judges. Where therefore such transfer may have taken place, as is the case in all the districts in these provinces with exception to Delhi and the Saugor and Nerbudda Territories, the Court are of opinion that from the date abovementioned the Sections in question must be considered as in force; and that, consequently, from that date all appeals from orders passed by a magistrate in any judicial proceeding whatever, including cases under Regulation XV. of 1824, should lie to the session judge and not to the commissioner, and that the former officer should receive and forward to the Court the statements hitherto submitted to and forwarded by the latter.

3. Should the Calcutta Court concur in this opinion, the Court propose to issue circular instructions in accordance therewith to the several criminal authorities subject to their control.

The Presidency Court, on the 27th April, 1838, concurred in this construction.

April 6th, 1838.

The following Resolution was passed by His Honor the Deputy Governor of Bengal under date the 20th April, in concurrence with the opinion of the majority of the Calcutta Court of Nizamut Adawlut.

No. 1146. 1825 Reg. XI.

The Deputy Governor of Bengal concurs in the opinion of the majority of the Presidency Sudder Court, that it is the duty of a magistrate to take all proper measures for preventing affrays and breaches of the peace, and that, with that view, he is competent, in cases of dispute about land gained by alluvion, to put one of the parties in possession, being guided in his decision by the principle recognized in Regulation XI. of 1825.

April 20th, 1838.

No. 1147. Circular Order, S D A 27th October, 1837, No 216

Held that the object of the circular order of the 27th October, 1837, regarding security bonds written on the same sheet of paper with the principal deed, and bearing the stampt required for the latter instrument, was to explain the law on the subject for the protection of the interests of the Government, and not to declare deeds drawn up under those circumstances inadmissible, provided the proper measures were taken to have them legalized. Parties holding such documents are at liberty to apply to the revenue authorities, under Section 14, Regulation X. 1829, to have a stamp affixed to the deeds, so as to make them legal evidence in courts of law.

April 27th, 1838.

From the Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 27th April, 1838.

No. 1148. 1837 Act XXV.

I am directed to transmit to you, for the purpose of being laid before the Calcutta Court, the accompanying copy of a letter from the judge of Benares, No. 83, dated the 14th instant, requesting the opinion of the Court on certain points connected with Act XXV. of 1837.

2. In reply to the first question, submitted by Mr. Mainwaring, the Court propose to communicate to him the construction recently adopted by both Courts* to the effect, that appeals from orders passed by the principal sudder ameens, under Clause 6, Section 3, Regulation VII. of 1825, in execution of their own decrees in suits above the value of 5,000 rupees, will lie direct to the Court of Sudder Dewanny Adawlut.

* Subsequently circulated by Circular Order, dated 11th May 1838.

3. Upon the same principle the Court are of opinion, that summary appeals of the nature of those described in the 3d paragraph of Mr. Mainwaring's letter must follow the like course.

4. With regard to the question submitted in the 2d paragraph of Mr. Mainwaring's letter the Court observe, that the terms of the proviso contained in Section 8 of the Act under consideration, are general, and must, they are of opinion, be held to include cases referred to the principal sudder ameens under that Section in which the amount or value of the matter at issue may exceed 5,000 rupees, equally with those under that sum, and that, consequently, the appeal in such cases from the order of the principal sudder ameen should lie in the first instance to the zillah or city judge, and specially to the Sudder Dewanny Adawlut.

5. Should the Calcutta Court concur in the opinions above expressed, the Court propose to communicate them to Mr. Mainwaring.

From the Judge of the City of Benares to the Register of the Sudder Dewanny Adawlut, Western Provinces, dated 14th April, 1838.

With reference to paragraph 5th of the Court's circular letter No. 491, dated the 23d February last, I request I may be furnished with the instructions of the Court whether summary appeals from the decision of principal sudder ameens in suits above the value of 5,000 rupees, made under Clause 6, Section 3d, and Section 5, Regulation VII. of 1825, are to be made direct to the Sudder Dewanny or as heretofore to his court.

2. Further, with reference to Section 8, Act XXV. of 1837, whether the proviso that appeals from the decisions of principal sudder ameens in miscellaneous or summary proceedings, transferred under that Section, are to be made in the first instance to the judge, applies to cases above the value of 5,000 rupees, or whether the appeal in such cases is to be made direct to the Sudder Dewanny Adawlut.

3. And again whether summary appeals from the decisions of principal sudder ameens passed under Sections 4 and 5, Regulation II. of 1806, in cases exceeding 5,000 rupees in value are to be made direct to the Sudder Dewanny Adawlut or as heretofore to this court.

4. Although the principal sudder ameens have now the full power heretofore vested in a judge, the special authority vested in judges by Clause 3d, Section 16, Regulation V. of 1831, and other enactments, has not yet been declared applicable to the principal sudder ameens' courts.

April 27th, 1838.

The Presidency Court, on the 11th May, 1838, *concurred in this construction.*

From the Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 27th April, 1838.

No. 1140.
1837
Act XXV.
1831.
Reg. V. Sec. 16.

I am directed by the Court to request that you will lay before the Calcutta Court the accompanying copy of a letter from the judge of Benares, No. 36, under date the 16th instant,

submitting certain further questions connected with Act XXV. of 1837 and the Calcutta Court's circular letter of the 23d February last, issued by this Court on the 30th ultimo.

2. With regard to the first point contained in Mr. Mainwaring's letter, the Court direct me to observe that Act XXV. of 1837, in enlarging the powers of the principal sudder ameens, in no way modifies that part of Clause 1, Section 18, Regulation V. of 1831, which prohibits the reference to those officers of suits in which themselves, their relatives or dependants, or the vakeels, or officers* of their court may be a party; and the Court are, therefore, of opinion that such prohibition must be considered to be still in full force.

3. With regard, however, to the second point involved in Mr. Mainwaring's reference, it appears to the Court, that the mere circumstance of a vakeel of the judge's court being authorized by that officer, under the discretionary power vested in him by Clause 3 of the same Section, to practise in the court of the principal sudder ameen either in any case, or in any particular class of cases, such, for instance, as those in which the Government or its officers may be a party, cannot be considered as constituting such vakeel, a vakeel of the principal sudder ameen's court within the intent and meaning of the enactment above cited, and they propose, therefore, with the concurrence of the Calcutta Court, to inform Mr. Mainwaring accordingly.

From the Judge of the City of Benares to the Register of the Sudder Dewanny Adawlut, Western Provinces, dated 16th April, 1838.

With reference to the instructions conveyed in the second paragraph of the Court's circular letter No. 491, under date the 23d of February last, and to the provisions of Section 18, Regulation V. of 1831, I request I may be informed if I am to retain all suits on my own file in which the relations or dependants, or the vakeels or officers of the principal sudder ameen's court are a party. In consequence of the principal sudder ameen being now authorized to dispose of suits in which Government or its officers are a party, the Government vakeel has become a vakeel of the principal sudder ameen's court; and if the prohibition contained in Section 18, Regulation V. of 1831, is still in force, several suits in which the vakeel of Government is himself a party must be retained on my file, and those of a similar description now pending before the principal sudder ameen must be re-transferred to the court.

April 27th, 1838.

The Presidency Court, on the 18th May, 1838, concurred in the construction of the Western Court.

To the Register of the Nizamut Adawlut, Western Provinces, dated 27th April, 1838.

No. 1150, 1837 Reg. XII. Sec 21.

I am directed by the Court to request that you will lay before the judges of the Court of Sudder Nizamut Adawlut for the Western Provinces, the accompanying copy of a letter from the magistrate of zillah Dinagepore, dated the 9th instant.

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* Section 1, Act XXVII of 1838, rescinds so much of Clause 1, Section 18, Regulation V of 1831, as prohibits the reference to principal sudder ameens of suits in which the vakeels or officers of their courts are a party.

2. The Court propose to inform the magistrate of Dinagepore, in reply to his question, that under the principle recognized in the Court's construction No. 388 of the printed construction book, any fine imposed in conformity to Section 21, Regulation XII. 1807, should be commuted, if not paid within a given time, to imprisonment for a limited term.

3. With reference to Mr. Bentall's second question, the Court are of opinion that, in the absence of the zemindar, the actual manager of the estate is the responsible person, and should be proceeded against, in default of compliance with the requisitions of the law cited.

4. Should the judges of the Western Court concur in the opinions expressed in the preceding paragraphs, a reply will be made to the magistrate of Dinagepore accordingly.

From the Magistrate of Dinagepore to the Register of the Presidency Court of Sudder Nizamut Adawlut, dated 9th April, 1838.

I have the honor of requesting to be informed whether I may realize the fine authorized by Section 21 of Regulation XII. of 1807, by a sale of the personal and real property of the recusant person.

2. And in case a zumeendar is an absentee from the district, how I am to realize the amount of fine.

April 27th, 1838.

The Western Court, on the 11th May, 1838, *concurred in this construction.*

No. 1151.
1836
Act XIII.

The following answers were given to the questions in juxta-position, arising out of a reference made by the judge of Patna, regarding the operation of Act XIII. 1836:

Question 1st.—The sicca rupee being abolished, are all accounts in future, in suits filed in court, to be settled at par, or where the agreement was in sicca rupees, is the calculation to be made at Company's rupees 106-10-8 per 100 siccas?

Answer.—The question supposes that the agreement is for *value* and not for *specific coins.* The calculation will therefore be made at 106-10-8 Company's for 100 Siccas, i. e. the intrinsic difference.

Question 2nd.—From 1st January in the present year, are parties to be allowed to write bonds, deeds, &c. in sicca rupees, and then take exchange at Company's rupees 106-10-8, or must all agreements be drawn out in Company's rupees?

Answer.—It is not necessary that bonds, &c. should be drawn out in Company's rupees; they may be drawn in siccas, and then, if for *value*, they will fall under the last question. If for specific coin (as where a man may covenant to deliver so many coins of the sicca currency, or so many dollars) the payment must be in the coin covenanted.

April 27th, 1838.

11 May, 22 June, } 1838.

No. 1152.

Prisoners disabling themselves for labor, how punishable.

Held by the two Courts of Nizamut Adawlut, on a reference from the session judge of Patna, that prisoners disabling themselves for labor are guilty of a breach of prison discipline, and as such are punishable by the magistrate under the general rules laid down for the better management of public jails.

May 11*th*, 1838.

To the Judge of Zillah Behar, dated 11*th May*, 1838.

No. 1153.

1813. Reg. VI. Secs. 2 and 3.

I am directed to state, that as no mention is made of arbitration bonds in Sections 2 and 3, Regulation VI. 1813, the Court are of opinion, that the mere circumstance of such bonds not having been executed, cannot of itself be held to bar the summary jurisdiction of the civil courts in cases referred to private arbitration under the provisions of those Sections; but that if the reference of the case to arbitration be not denied, the Court should proceed summarily to enforce the award, subject of course to all the rules and limitations laid down in the enactment in question.

2. When, however, the agreement to abide by the award of arbitrators may be disputed, the Court consider that it would be dangerous to allow this point to be determined in a summary form; and they are of opinion, therefore, that in such cases the parties should be referred to a regular suit.

May 11*th*, 1838.

The Western Court concurred in this construction.

No. 1154.

1828. Reg. VIII.

Held by both Courts of Nizamut Adawlut, on a reference from the officiating session judge of Dacca, that the provisions of Regulation VIII. 1828, are applicable only to cases of affrays regarding lands, and their produce; and cannot be made to apply to other cases of affray from whatever cause arising.

June 1*st*, 1838.

From the Register of the Western Provinces to the Register of the Prssidency Court of Sudder Dewanny Adawlut, dated 22*d June*, 1838.

No. 1155.

Civil courts competent to award costs in miscellaneous cases.

A question having arisen as to whether it is competent to the civil courts to award costs in miscellaneous cases, either original, or in appeal, I am directed to request that you will submit the point for the consideration and opinion of the Calcutta Court.

2. The Court observe that it has not hitherto been the practice of this Court, nor, so far as they are informed, of the Calcutta Court, to award costs in such cases. Upon general principles of equity and justice, however, the Court can see no good reason why a party in a miscellaneous case should not be reimbursed, by the opposite party, any reasonable costs to which he may be subjected in prosecuting or defending a just claim, in the like manner as in a regular suit; and they are, therefore, of opinion, there being nothing prohibitory that they are aware of in the Regulations, that the same rules which govern the award of costs in the one case, should equally extend to the other. Should the Calcutta Court concur in this opinion, the Court propose to act upon it in the case,

which has given rise to the present reference, and also to adopt it as a rule of future practice.

3. The Court direct me to add that they understand the practice of awarding costs in miscellaneous cases is very generally followed in the lower courts, and that it is not objected to, at least it has never formed the subject of an appeal to them.

June 22d, 1838

The Presidency Court, on the 13th July, 1838, *concurred in this construction.*

No. 1156.
1807.
Reg IX. Sec 19, Demand of illegal batta on Company's rupees by mehajuns or shroffs.

Held by the Courts of Nizamut Adawlut, on a reference from the magistrate of Behar, that a magistrate is not competent, under the provisions of Section 19, Regulation IX. 1807, to award fine or imprisonment to mehajuns or shroffs who may be in the habit of demanding illegal batta on Company's rupees.

June 29th, 1838.

From the Register of the Western Provinces to the Register of the Presidency Court of Nizamut Adawlut, under date the 6th July, 1838.

No. 1157.
1824
Reg. XV.
A session judge is competent to suspend at any time the execution of the magistrate's final order, pending the decision of the case in appeal, in cases under Reg. XV. of 1824.

I am directed to transmit to you, for the purpose of being laid before the Calcutta Court, the accompanying copies of a letter and its enclosures from the session judge of zillah Mynpoorie, under date the 13th ultimo.

2. The Court are of opinion that in cases of the nature of that which gave rise to Mr. Begbie's reference, the session judge must be considered competent to exercise his discretion in suspending at any time the execution of the magistrate's final order, pending the decision of the case in appeal, otherwise, the Court observe, the whole object of the appeal would frequently be entirely defeated: and should the Calcutta Court concur in this opinion, they will inform Mr. Begbie accordingly.

Extract of a letter from the Session Judge of Zillah Mynpoorie to the Register of the Western Provinces, dated 13th June, 1838.

Para. 1. By the desire of the magistrate of Mynpoorie I have the honor to submit the following question for the consideration and orders of the Court:

2. "Can a session judge on admitting an appeal in a summary suit under Regulation XV. of 1824, suspend the execution of the final orders of the magistrate or joint magistrate, before perusing the case?"

July 6th, 1838.

The Presidency Court, on the 3d August, concurred in the above construction.

To the Judge of City. Patna, dated 13th July, 1838.

No. 1158.
1819.
Reg. VII. Sec. 6.

I am directed by the Court to observe that in all cases in which it has been the intention of the legislature to render a summary decision subsidiary to a suit in the

civil courts, the regulations contain specific provision to that effect, as for instance, in cases coming under the provisions of Regulation XV. of 1824. No such provision is however made as regards cases of the nature of those specified in Section 6, Regulation VII. of 1819; and they are therefore of opinion that cases decided by the criminal authorities under the rules laid down in that Section are not open to a civil action. The civil court of course can have no power to issue an injunction to a magistrate for the purpose of stopping execution of his order.

The Western Court, on the 22d June, 1838, concurred in this construction.

July 13th, 1838.

No. 1159.
1814.
Reg. XXVI. Sec. 8, Cl. 2.

Held by the Calcutta Court, in concurrence with the Western Court, on a reference from the judge of Tirhoot, that agreeably to the provisions of Clause 2, Section 8, Regulation XXVI. 1814, petitions of appeal presented to the zillah judge against the decision of the principal sudder ameen, sudder ameen, and moonsiff, in original suits, do not require to be accompanied by a copy of the decree appealed from.

July 20th, 1838.

From the Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 27th July, 1838.

No. 1160.
1837
Act XXV. Sec. 12.

I am directed by the Court to request that you will submit, for the consideration and opinion of the Calcutta Court, the accompanying copy of a letter from the judge of zillah Goruckpore, No. 170, under date the 19th instant, relative to Section 12, Act XXV. of 1837.

2. The Court observe, that the law does not require the confirmation of the zillah or city judge to the appointment by the subordinate judicial functionaries of his district of the ministerial officers of their respective courts, but merely declares that the appointment of those officers shall be made subject to the general control of the zillah and city judges and of the Court of Sudder Dewanny Adawlut; and they are, therefore, of opinion that, as stated in the 2d paragraph of your letter of the 17th November last, the interference of the district judges in such cases shall be exercised only with a view to prevent the appointment of improper persons, or the dismissal, without good and sufficient cause, of individuals already appointed.

From the Judge of Zillah Goruckpore to the Register of the Sudder Dewanny Adawlut, Western Provinces, dated 19th July, 1838.

With reference to Section 12, Act XXV. of 1837, I request the Court's opinion, whether by the words "general control" it is intended that the subordinate courts should obtain the sanction of the judge to the appointment or dismissal of their

1160— 1161

27 July, 3 Aug. } 1838

ministerial officers, or whether they have the power of appointing and dismissing them without any reference to the judge.

2. It appears to me desirable that the point at issue should be clearly understood.

July 27th, 1838.

The Presidency Court, on the 17th August, 1838, *concurred in the above construction.*

From the Judge of Zillah Tirhoot to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 25th May, 1838.

No. 1161. 1829 Reg. X. Sects. 14 & 15.

Permit me to solicit the construction of Sections 14 and 15, Regulation X. of 1829, by the Court of Sudder Dewanny Adawlut, on the following points:

1st. When a deed bearing an improper stamp is presented to a court, are the courts authorized to interfere, and direct that the parties shall procure it to be re-stamped under the provisions of Section 14, or is this entirely at the discretion of the party, in which the court *ought* not to give any assistance?

2d. In the event of a deed requiring to be re-stamped, is it competent for any collector of any district, to receive the petition and to pass the order on reference to the commissioner?—or does this pertain alone to the collector of revenue of the district and commissioner of the division in which the property is situated?

3d. If the collector of the district and commissioner of the division in which the property affected is situated, decline to sanction the affixing the stamp, can the party move the collector and commissioner of a distant district and division, and in the event of a stamp being affixed under the authority of these last, shall that deed be held valid and good in the court of the district in which the property is situated?

4th. If an improperly stamped deed shall have been filed, and if, in ignorance of the insufficiency of the stamp, a decree shall have been passed thereon by the court of first instance, and if on appeal the error is found out and the deed be declared invalid, and the first decree consequently shall be set aside, and if thereafter, the holder of the deed, after failing to obtain the sanction of the collector of the district and commissioner of his own division, shall procure a re-stamp through the interference and orders of the collector and commissioner of another district and division, and shall then re-tender the re-stamped deed in the court of special appeal, shall such re-stamped deed be filed and admitted or not?

I beg to state that I consider a construction on these points necessary, because there would be no further appeal in this matter, and because the wording of the Sections appears to me to allow of two meanings.

To the Judge of Zillah Tirhoot, dated 3d August, 1838.

I am directed by the Court to communicate the following replies to your queries:

2. *Query 1st.*—A civil court is at liberty to instruct a party presenting a deed bearing an improper stamp, to apply to the revenue authorities for the purpose of having the proper stamp affixed.

5. *Query 2d.*—A deed is admissible as evidence in a court of justice upon which the proper stamp has been affixed under the orders of any commissioner of revenue, on the representation of any collector subordinate to his authority.

4. *Query 3d.*—It is not the province of the civil courts to decide upon the powers of the revenue officers in respect to each other; but if a deed when presented to a court bears the proper stamp, it should be received in evidence, without a question being admitted as to the competency of the authority by whose orders such stamp was affixed.

5. *Query 4th.*—A special appeal having been admitted, in a case originally decided on the evidence of a deed bearing an improper stamp, the decisions of both the lower courts shall be set aside, and the court of first instance directed to restore the case to its original number on the file, and to proceed to dispose of it by allowing the plaintiff an opportunity of supplying the defect in his deed.

Issued in concurrence with two of the Judges of the Western Court.

August 3d, 1838.

No. 1102.

1816
Reg XVII. Sec. 14, Cl. 1 & 2.

Held by the Calcutta Court, in concurrence with the Western Court, on a reference from the officiating session judge of Dinagepore, that the magistrate's proceedings regarding the escape of convicts should be submitted to the session judge under the provisions of Clause 1, Section 14, Regulation XVII. 1816, but that agreeably to the provisions of Clause 2 of the same Section, the escape of the convicts should be reported to the superintendent of police, and that measures for their apprehension should be taken by the magistrate in communication with that authority.

1837.
Act XXIV. Sec. 7.

2. It was further held that by Section 7, Act XXIV. 1837, the superintendent of police cannot exercise any authority over the guards of prisoners effecting their escape.

August 3d, 1838.

From the Magistrate of Dinagepore to the Register of the Presidency Court of Nizamut Adawlut, dated 14th June, 1838.

No. 1103.

1819.
Reg VII Sec 4 Rule regarding the evidence of the mother of an illegitimate child against the alleged father.

I have the honor of requesting the instructions of the Court, whether the evidence on oath of the mother of an illegitimate child, that such a person is the father of it, is sufficient to justify and require a magistrate to enforce Section 4 of Regulation VII. of 1819, against the asserted father who denies the fact, or whether other evidence is necessary.

2. I have occasionally in these cases directed the head men of the village in which both parties have resided, to appoint a punchait in the case; but this method of determining the case is always objectionable, when the mother and asserted father are of different caste.

To the Magistrate of Zillah Dinagepore, dated 3d August, 1838.

I am directed by the Court to inform you that the evidence of the mother of an illegitimate child, against the alleged father, is prima facie good as far as it goes, but

should be sifted and weighed as any other testimony, and tested, as far as practicable, by any circumstantial evidence that may offer. The result must then depend on the belief or otherwise reposed in it by the magistrate.

The Western Court, on the 13th July, 1838, concurred in this construction.

August 3d, 1838.

From the Magistrate of Dinagepore to the Register of the Presidency Court of Sudder Nizamut Adawlut, dated 9th May, 1838.

No. 1164. 1824 Reg XV.

I have the honor of requesting to be informed whether a dispute between a zemindar and the proprietor of the bunkur of the same zemindaree is cognizable by a magistrate under Regulation XV. of 1824.

2. Although neither the preamble of the Regulation nor the Court's circular of the 17th December, 1830, relate to the point, it appears to me that the rights of each party being self-dependent, and there being no condition between them, it is the duty of the magistrate to decide their dispute summarily.

3. I have previously had cases before me in which patches of land for the sake of the wood growing on it have been a cause of dispute, and I have then on determining the possession of either party taken a recognizance that he would not cut down the trees until the expiration of a given time sufficient for the adversary to bring his case forward in the civil court; but in this case where it is not the land but the produce which is the cause of dispute, the party can scarcely be said to be in possession until he has the power over the produce.

4. I can find no definition of the word "bunkur" which explains what it may consist of, but the case which causes this reference is a dispute respecting the possession of some sal-trees growing not far from a ryot's house near a jungle. The Regulation requires that a decision should be given, but a decision on the possession of the forest tree which does not produce fruit or gum, or, if producing them, has never before been appropriated by any individual, must necessarily be influenced by the right of possession or the power to take possession from the time the tree first began to shoot; it consequently becomes necessary, before determining these cases, to be informed in what bunkur consists, and whether if forest trees are planted by the ryots of a zemindar, the proprietary right immediately becomes that of the zemindar or of the owner of the bunkur.

To the Magistrate of Zillah Dinagepore, dated 1st June, 1838.

The Court having had before them your letter No. 3, dated the 9th ultimo, direct me to request that you will state more particularly the nature of the grounds and the species of tenure, under which the respective parties claim the bunkur alluded to.

From the Magistrate of Zillah Dinagepore to the Register of the Presidency Court of Sudder Nizamut Adawlut, dated 16th June, 1838.

I have the honor to acknowledge the receipt of your letter No. 1554, dated 1st instant, and in reply to inform you that originally nearly the whole of this district belonged to one zemindar, and that it was all sold for arrears of revenue in the following manner.

2. Each pergunnah was divided into several lots, and the zemindar's right in the land of each lot was sold separately, and together with the last lot of each pergunnah the bunkur of the whole pergunnah was sold—the bunkur of the district having been assessed pergunnahwar, and there appearing to have been no knowledge, at the time that the property was thus subdivided, what share of the assessment should be apportioned to each lot?

3. One of the parties in the case before me is the zemindar of the estate on which the trees in dispute grow, and states that they do not come under the denomination of *bunkur*, and that he is in possession of them.

4. The estate in which the trees grow was not the last lot in the pergunnah sold, and the zemindar allows (and it is shewn by the records of the collector's office) that he has no right in any thing which is bunkur.

5. The other party is the zemindar of the last lot sold, and states that he is in possession of the bunkur of the whole pergunnah and of these trees as coming under the denomination of bunkur, and it appears by the records of the collector's office that he has the right to the bunkur of the whole pergunnah.

6. The only case which I have had before me with exactly similar grounds on which each party founded his claim, was a case in which plots of thatching grass were the subject of dispute. At the time I had no doubts of my ability to decide the point of possession, and gave it in favor of the zemindar; but the case was appealed, and I understand that my order was upset on the grounds of right and owing to a different construction of the word bunkur. And as I might have other cases before me in which it might be necessary to know what bunkur is, I applied for a definition of the term in my letter to the session judge, dated 7th July, 1837, a copy of which was forwarded to the Court of Nizamut Adawlut.

7. On receipt of my application the judge refrained from enforcing his order, and the case was afterwards disposed of in the civil court.

8. There is no doubt but that the present case also will be appealed, which ever way I decide it.

9. I take this opportunity of forwarding a copy of a letter addressed by me to the session judge of this district. The one party in the case to which it relates was in undisputed possession of eleven annas share of the estate, and stated himself to be in possession of the remainder. The other party stated himself to be in possession of the five annas share alone, but no division of lands had taken place.

10. I request to be informed whether a magistrate may decide a case in which the dispute is respecting possession of a part of an estate, first, if the contending party is

in undisputed possession of a share of the estate and claims the whole, and secondly, if the two contending parties claim possession of only a part of the whole.

To the Magistrate of Dinagepore, dated 10th August, 1838.

I am directed to communicate to you the opinion of the Court, that a dispute for possession of a bunkur is cognizable by the magistrate under the spirit of Section 3, Regulation XV. 1824, with reference to the preamble of that enactment.

2. With reference to the question submitted in the 10th paragraph of your letter No. 7 of the 16th June, the Court are of opinion that a magistrate is competent to try and summarily dispose of a case of the nature described, under the provisions of the abovementioned regulation.

The Western Court, on the 27th July, 1838, concurred in this construction.

August 10th, 1838.

From the Judge of Zillah Beerbhoom to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 26th May, 1838.

A question has arisen which I own I find it difficult to decide.

2. I request that you will lay this letter before the Sudder Dewanny Court.

No. 1165.

Interference of the civil court with property attached by the collector, in execution of a summary award passed under Reg VIII. 1831, or for the realization of the Government dues, under the circumstances of the case.

3. In Regulation II. of 1805, Section 4, it is clearly stated that the summary enquiry and process authorized by the Regulation therein quoted shall not apply to any arrear of rent or other demand which may have been due more than a complete year before the delivery of the petition of arrest or application for such summary enquiry and process.

4. Acting upon this it has been the practice of this court, in the event of a farmer or zemindar, or other proprietor, having attached the property of a defaulting ryot, in executing a decree on that ryot, to release to the landholder the bal balance or the sum due for twelve months previous to the attachment and to pay the balance to the decree-holder, leaving the landholder to sue the ryot for the bukya or balance of former years in a regular suit.

5. A certain ghatwali mehal was attached by the collector of Beerbhoom some time since for a balance of revenue as well as by the orders of this court for the execution of a decree against the ghatwal.

6. A decree is now obtained in the moonsiff's court against a ryot in the above mehal, and his crops, &c. are attached by the decree-holder for his money and by the collector's attaching officer for a balance of revenue due from the same ryot.

7. Under these circumstances the collector requires the whole of the ryot's property to be sold to realize the balance of revenue, being a balance for four years from the ryot to the estate. But acting upon the practice above cited I issued orders to the moonsiff to sell the property, to give to the collector's officer the balance due for the twelve months preceding the attachment, and the remainder to the decree-holder.

8. The collector objects to this, and claims the balance of former years from the ryot, quoting the latter part of Section 4, Regulation II. of 1805 above cited, commencing with the orders "provided however," to the end of the paragraph.

9. Now in this quotation in the English Regulations it is clear that the collector as attaching officer can claim; but if so why should the explanation immediately above it distinctly declare the contrary, that is, if I am right in considering the attaching officer on the part of the collector to be *in loco* zemindar?

10. It is in this case of little consequence as the sum is small, but I cannot alter the practice which has prevailed for years in this court, and I believe generally, without express orders from the Sudder Dewanny Adawlut.

11. I have the honor to forward the proceedings on this subject as noted in the margin.*

* Proceedings of the Judge, dated 26th March, 1838
Proceedings of the Collector, dated 16th April, 1838.

To the Judge of Zillah Beerbhoom, dated 17th August, 1838.

I am directed to observe that if the collector has attached the property of the ryot alluded to in your letter No. 92, dated 26th May last, in satisfaction of a summary award of his own court, his jurisdiction in summary suits being quite independent of that of the judge, and himself, in such cases, in no way subordinate to the authority of that officer, they do not see on what ground the judge could exercise any interference in the matter; while if the whole estate should have been placed under attachment, or kham management, with a view to the realization of the Government revenue, whether for former years, or the present, and the collections be made direct by the collector, or his officers, it does not appear to the Court how the judge could interfere either with the general management of the estate, or with the appropriation to the payment of the Government demand of the rent arising from it.

The Western Court, on the 20th July, 1838, *concurred in this construction.*

August 17th, 1838.

Lall Bee and Omied Allee, Appellants,

versus

Mahomed Wassuck, representative of Maktool Beebee, deceased, Respondents.

From the Additional Judge of Zillah Chittagong to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 31st May, 1838.

No. 1166.
1810
Reg. XIX.

I have the honor to submit, for the consideration of the Court, a copy of my proceedings in the above case, dated the 2d of September last, and of the collector of this district's reply, dated the 9th of January last. The Court will observe that the collector declines to sell Mouzah Undar Manick, the property of defendant's sureties, because it is a tenure appropriated for the support of a musjid, and he is of opinion that Regulation XIX. of 1810, does not authorize the sale of such property for the recovery of the amount of a decree, or on any other account.

2. May I solicit the Court's construction of the law in question? The case has been for many years pending and the decree is still unexecuted.

To the Additional Judge of Zillah Chittagong, dated 17th August, 1838.

I am directed to communicate to you the opinion of the Court, that "wuqf property" cannot be alienated, or diverted from the purposes for which such property was intended.

The Western Court, on the 20th July, 1838, *concurred in this construction.*

August 17th, 1838.

No. 1167.
1817.
Reg. XX
Sec. 19, Cl. 1d.

Under the circumstances stated in the annexed extract of a letter from the officiating magistrate of Benares to the session judge of that district, it was held by the Western Court, concurrently with the Calcutta Court, that a discretion must be considered to be vested in the magistrate to authorize the detention at the thannah of a party accused of a criminal offence, cognizable by the police, beyond the period specified in the 16th Clause of Section 19, Regulation XX. 1817, when the measure may appear to that officer absolutely necessary for the ends of justice, but that it should be exercised with great caution, and only on very strong grounds.

Extract of a letter from the Acting Magistrate of Benares to the Session Judge of that City, dated 2d August, 1838.

Para. 2. An application was made to me by the magistrates of Arrah and Ghazeepore for the recovery of certain stolen property said to be in the house of the defendant Naraindoss, and on a search of his premises many articles were discovered. I therefore thought it absolutely necessary (till further enquiries should be made how far he was implicated) to keep the defendant under some restraint, both to prevent the possibility of his removing the remainder of the undiscovered property and also to prevent his escape should he be so disposed.

3. As the case was not connected with this zillah, his removal to the sudder station appeared to me an unnecessary piece of harshness, and I therefore directed that he should be kept under restraint at the thannah (though not in confinement) with the view of communicating further with the magistrate of Arrah on the subject of the identification of the property; and that no delay has occurred in doing so is apparent from that gentleman's reply accompanying the misl which was laid before you. The defendant has now however, according to the instructions conveyed in your proceeding of the 31st ultimo, been removed to the hajut tujveez.

4. It appears to me that the detention of the prisoner in this case was unavoidable, and that the Clause and Section of the Regulation quoted by you is meant to prohibit thannadars from confining individuals beyond forty-eight hours, but does not interdict a magistrate from using his discretion in detaining a prisoner at a thannah or elsewhere.

August 17th, 1838.

No. 1168.

1833
Reg XII Sec. 2.
1831.
Reg. V. Sec. 18, Cl. 3

Held by the Calcutta Court, in concurrence with the Western Court, that a pleader appointed under the provisions of Section 2, Regulation XII. 1833, can practise, *under the rules contained in that enactment*, only in the judge's court, but that he may be authorized under Clause 3, Section 18, Regulation V. 1831, to practise in the court of the principal sudder ameen under the rules in force for that court.

August 17th, 1838.

From the Officiating Session Judge of Zillah Dinagepore to the Registrr of the Presidency Court of Nizamut Adawlut, dated 15th August, 1838.

No. 1169.

1807
Reg. IX. Sec. 22.

With advertence to the provisions of Section 22, Regulation IX. 1807, the magistrate of this district and myself having some doubts as to the exact powers of a sessions court in regard to the trial of appeals, regular and miscellaneous, from orders passed by the magistrate or his assistant, I beg you will do me the honor to solicit the instructions of the superior Court on the following points:

1st. In regular trials, in which the magistrate may have passed a final order, either of penal sentence or acquittal, but in which it appearing on appeal before this court, either that evidence has not been taken, or some point considered material has not been investigated by the magistrate, is a court of sessions competent to direct the magistrate to take the omitted evidence, or make the requisite enquiry and *then* pass a proper order, in other words to try the case *de novo*; or, (the magistrate has already passed a final order which perhaps it may not be proper or competent to himself to reverse, though of course he might, if not disposed to modify or alter it, adhere to his first order,) should the proceedings, after the magistrate has completed the inquiry directed, be returned to the sessions court, leaving the session judge either to reverse, confirm or modify the magistrate's order, or pass such orders as may appear just and proper?

2d. In cases, regular or miscellaneous, which the magistrate may have dismissed on default or struck off the file without investigation of their merits in consequence of the plaintiff failing to attend or neglecting to prosecute his complaint, is a sessions court authorized, on the party appealing, and adducing satisfactory proof that he was prevented from attending or prosecuting his cause from circumstances beyond his control, to direct a magistrate to bring such cases on his file and try them, as if they had not been dismissed?

To the Officiating Session Judge of Dinajepore, dated 31st August, 1838.

The Court, having had before them your letter No. 506, of the 15th instant, direct me to inform you that it has been ruled by them, concurrently with the Western Court,* that in any case, decided by the magistrate, which may appear to the session judge not to have been sufficiently investigated, or in which further enquiry may be practicable or requisite for the ends of justice, such enquiry according to Section 22, Regulation IX. of 1807, must be instituted by the magistrate who is to communicate the result thereof to the session judge.

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* See No 1164.

31 Aug
14 Sept, } 1838.

2. With reference to your second question, I am directed to state that it is competent to a session judge, on sufficient grounds, to order the magistrate to replace on his file a case struck off by him on default.

August 31st, 1838.

No. 1170.

Circular Order. December 17th, 1830.

1824 Reg. XV.

Magistrates cannot summarily decide disputes between indigo planters regarding crops, except where the parties claim to be proprietors of the land.

Held by the Calcutta Court, in concurrence with the judges of the Western Court, on a reference from the session judge of Jessore, that a magistrate cannot interfere in disputes between indigo planters regarding crops, except where the parties claim to be proprietors of the land on which the disputed crops are grown; and that under the construction of the Court, dated 17th December, 1830, he cannot decide summarily, agreeably to Regulation XV. 1824, to whom shall be adjudged crops grown on land held under pottahs from zemindars or ryotts. In such cases the planter must be referred to the civil court for his remedy.

September 7th, 1838.

From the Judge of Zillah Mymensingh to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 3d July, 1838.

No. 1171.

A petition for special appeal once struck off by the zillah judge cannot be re-admitted by him without the sanction of the Sudder Dewanny Adawlut.

May I request the favor of your obtaining for me the Court's opinion on the following point? Can a judge, after striking out of the file a petition for special appeal in consequence of the petitioner or appellant not having, as ordered, within the time allowed, furnished security for the eventual costs of the appeal, again bring it on the file on the petitioner's showing good and sufficient reason why the security was not filed within the prescribed time?

2. What may have been the practice of the Provincial Courts or the Sudder Dewanny I know not, but adverting to the mania for appealing here, if some rule was laid down, it would save the superior Court perhaps the trouble of receiving and hearing this description of miscellaneous appeals.

3. The case of a petitioner who wants me to bring his appeal again on the file, which was struck off in consequence of a default of the nature above alluded to, is the cause of the present reference.

To the Judge of Zillah Mymensingh, dated 7th September, 1838.

I am directed by the Court to inform you that it is not competent to you, without the sanction of the superior Court, to re-admit a petition for special appeal which has once been struck off the file for any reason.

The Western Court, on the 10th August, 1838, *concurred in this construction.*

September 7th, 1838.

To the Judge of Zillah Behar, dated 14th September, 1838.

No. 1172.

Cases in which native judges making

With reference to your letters Nos. 78 and 111, dated respectively the 12th May and 16th July, I am directed to communicate to you the opinion of the Court that the native

Local enquiries are entitled to their expenses.

judges are not entitled to any allowance for travelling expenses or other account in cases "in which, for their own satisfaction or at the request of the parties, they may deem it proper to visit and inspect the property in dispute, and to make enquiries in regard to it on the spot."

2. The Court however consider that those authorities are entitled to the payment of their expenses when deputed to make local enquiries by a superior court.

September 14th, 1838.

From the Session Judge of Zillah Hooghly to the Register of the Presidency Court of Nizamut Adawlut, dated 19th July, 1838.

No. 1173.
1837.
Act XIX.

Adverting to a case disposed of before this Court in March last, in which the prisoners, Hurchunder Mookerjea and Anund Poddar, have been convicted of participation in an embezzlement of 16,023 rupees and sentenced to imprisonment without reference to the Nizamut Adawlut, I have to bring to the notice of the Court, that the prisoner Motee Lal Dhur, referred to in the remarks which accompanied the monthly statements, has been committed to take his trial during the sessions for the present month; that I have had the case before me on the 17th and 18th instant; and that this day the prisoner, when put on his defence, averred, that the sum of money for which he has given receipts to the foujdaree nazir amounting to Company's rupees 7,163, and with which sum he stands charged of having embezzled, form a part of the aggregate sum of 16,023 rupees and a much larger defalcation which has really taken place. He further represents that these different sums have been appropriated by the treasurer, and his brother Ramnaryne, who is his surety; and that large sums of money have been abstracted from the treasury, by the treasurer and his brother, in bank notes, which have been sent to the collector's office in payment of revenue; that this can be proved by an inspection of the challans of money paid to the collector and comparing the numbers of the notes taken from the treasury with those paid into the collector's office, Hurchunder Mookerjea, who is now undergoing his sentence of imprisonment, was the treasurer's and his brother's private servant; and the prisoner avers, that he is acquainted with the whole circumstances of the case and that he kept the treasurer's account books, which the magistrate has been directed to procure, and the prisoner wishes to have this individual examined for the defence.

2. My object in this communication is to request, that you will do me the favor of obtaining the opinion of the Court, whether the said Hurchunder Mookerjea is disqualified, by conviction, from giving evidence in this case. I apprehend that his evidence is inadmissible; but as the prisoner states that he has not any other evidence to prove the plea set up, I make this reference. In conclusion I beg to state that Hurchunder in his defence likewise averred that he took notes from the treasury to the collector's office in payment of revenue due from the treasurer.

To the Session Judge of Zillah Hooghly, dated 14th September, 1838.

I am directed to communicate to you the opinion of the Court, that under the provisions of Act XIX. of 1837 the evidence of the convict Hurchunder Mookerjea is admissible on the trial of the prisoner Moteeloll Dhur, it resting of course with you to place such reliance on it as it may appear to deserve.

The Western Court, on the 24th August, 1838, concurred in this construction.

September 14th, 1838.

From the Officiating Session Judge of Zillah Dinagepore to the Register of the Presidency Court of Nizamut Adawlut, dated 10th July, 1838.

No. 1174.

A magistrate may refer a case of rape to the darogah for investigation.

The joint magistrate of Malda having referred a case of rape for investigation to a darogah, I have the honor to request the opinion of the Nizamut Adawlut as to whether a magistrate can legally refer a charge of rape for investigation to a police darogah.

2. Section 3, Regulation VII. 1811, clearly directs that "all complaints or prosecutions for misdemeanours or offences of the nature specified in the first part of clause second of the preceding section," (in which the crime of rape is included,) "shall be preferred in the first instance at the cutcheries of the magistrates;" and by Section 6, magistrates are strictly prohibited from referring to the police, for investigation and report, charges which by Section 2 those officers are or were prohibited from receiving; but the latter Section has been rescinded by Section 2, Regulation XX. 1817, while it is true, as stated by the joint magistrate, that in Section 12 of the latter enactment, specifying of what charges darogahs shall not take cognizance, the crime of "rape" is included.

To the Officiating Session Judge of Zillah Dinagepore, dated 21st September, 1838.

I am directed by the Court to observe that the offences in regard to which the cognizance of the police officers is excluded are enumerated in Clause 1, Section 12, Regulation XX. 1817, (rape not being included;) and the 1st Clause of the following Section provides for the mode of procedure by the police "on the receipt of any charge or information of murder, robbery, &c. or other heinous offence not excepted *by this regulation*" from their cognizance. The Court therefore consider that the joint magistrate did not act illegally in referring a case of rape to the darogah for investigation.

2. You are requested to furnish the joint magistrate with a copy of this letter for his information.

The Western Court, on the 31st August, 1838, concurred in this construction.

September 21st, 1838.

To the Judge of Zillah Shahabad, dated 21st September, 1838.

No. 1175.

The pay of a sepoy cannot be attached in satisfaction of a decree against him.

With reference to your letter No. 216, of the 24th July last, I am directed by the Court to inform you that the pay of a sepoy cannot be attached in liquidation of the amount of a decree against him.

2. The decree holder is of course at liberty to proceed against the person or property of the sepoy, as in any other case.

The Western Court, on the 31*st August*, 1838, *concurred in this construction.*

September 21*st*, 1838.

To the Session Judge of Zillah Tirhoot, dated 21*st September*, 1838.

No. 1176.

Police officers not authorized to levy fines on account of cattle trespassing.

I am directed by the Court to inform you that police officers are not authorized to levy fines on account of cattle trespassing.

The Western Court, on the 31*st August*, 1838, *concurred in this construction.*

September 21*st*, 1838.

From the Joint Magistrate of Malda to the Register of the Presidency Court of Nizamut Adawlut, dated 4*th August*, 1838.

No. 1177.

Wilful and designed prevarication punishable as a contempt of

I beg you will have the goodness to inform me whether, in the opinion of the Court, a magistrate is authorized to punish prevarication as a contempt of court, and if not, whether it amounts to any other misdemeanor punishable by a magistrate.

2. By prevarication, I mean shuffling from statement to statement, in spite of gross contradictions in which a witness involves himself. It appears to me that no contempt of court can well be more marked than that of a witness, who by saying and unsaying any answer which he delivers convicts himself of falsehood: and I should be glad to have the authority of the Court to adopt this construction.

To the Joint Magistrate of Malda, dated 5th October, 1838.

I am directed by the Court to observe that it may frequently be difficult to discriminate between perjury and wilful prevarication in a witness, and as much must necessarily depend upon the particular circumstances of each case, the Court do not consider it possible to lay down any general rule on the subject; where, however, the prevarication may not amount to perjury, as defined in the Regulations, but may have been clearly wilful and designed, they are of opinion that a discretion must be considered to be vested in the presiding authority to punish such prevarication as a contempt of court under the general rules applicable to that offence.

The Western Court, on the 14*th September*, 1838, *concurred in this construction.*

October 5th, 1838.

No. 1178.

1834 Reg 11 Sec. 8. Cl. 1.

On conviction of privity to burglary, the labor is commutable to fine.

Held by the two Courts of Nizamut Adawlut that, as privity to burglary is not included amongst the exceptions contained in Clause 1, Section 8, Regulation II. 1834, in cases of conviction for that offence, when the crime may not amount to more than simple privity, the penalty of labor must be held to be commutable to a fine.

Calcutta Court, 7th September—Western Court, 5th October, 1838.

1179.
12 October, 1838

From the Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 12th October, 1838.

No. 1179.
1806.
Reg. XVII. Sec. 8.
Cir. Order, No. 37, July 22, 1813.

I am directed to request that you will submit the following point of law, arising out of a case now pending before the Court, for the consideration and opinion of the Calcutta Court.

2. The circumstances of the case, in which the present reference originated, are briefly as follows. An application having been presented to a zillah judge for the foreclosure of a mortgage and conditional sale, the usual notice, prescribed in Section 8, Regulation XVII. of 1806, was ordered to be served on the alleged mortgager, who, on receiving the same, gave in a petition to the judge, representing that the deed of mortgage stated to have been executed by him, and on which the motion of the opposite party was founded, was a forgery, and praying enquiry. The judge, on inspecting the deed, seeing reason to question its genuineness, directed the immediate apprehension and confinement in jail of the persons by whom it was filed, as well as of several others, whom he suspected of having been concerned in, or privy to the alleged forgery, including amongst the rest the cazee of one of the pergunnahs of his district, who had attested the deed, and one of the mohurrirs of his office, who had charge of the papers with which it was filed, and whom he considered to have aided in the forgery while those papers were in his possession; he then proceeded to enquire into the forgery, but had not closed his proceedings when the case was brought before the Court in appeal.

3. The question that now arises for consideration is, whether it was competent to the judge, with reference to the circumstances under which the case was pending before him, to enter into a formal investigation of the alleged forgery, which necessarily involved the determination of the validity or otherwise of the deed, with a view to pronounce a judicial opinion on that point, and to found such ulterior proceedings thereon as might appear proper, or whether he should not have confined his enquiries to ascertaining whether any of the officers under his control, sudder or mofussil, had been guilty of any neglect, or other misconduct in the matter, leaving the party, who alleged the deed to be a forgery, to have recourse to such means as were open to him under the Regulations, to establish the same, and the question of the genuineness or otherwise of the deed to be determined, so far as the civil court was concerned, in a regular suit in the usual manner.

4. The Court are of the latter opinion. They observe that the duty of the zillah and city judges, in cases coming under the Section of the Regulation above quoted, is expressly declared in the circular orders of the 22d July, 1813, to be purely ministerial, so far as relates to the purchaser, leaving them nothing to do but to cause the prescribed notice to be served on the seller, and to receive and pay over to the purchaser, if desirous of receiving the same, whatever money may be paid in by the seller, or if the purchaser should refuse to accept it, to restore it to the seller; and as such cases cannot therefore be considered to be pending judicially before the civil courts, they are not competent, in the opinion of the Court, to entertain and enquire into any pleas of the nature of those urged by the mortgager and conditional seller in the present case, at the stage and in the manner

ith which they were brought forward by him; and they propose, therefore, should the Calcutta Court, concur in this view, to act upon it in disposing of the case now before them.

October 12*th*, 1838.

To the Register of the Sudder Dewanny Adawlut for the Western Provinces, dated 2d November, 1838.

I am directed by the Court to acknowledge the receipt of your letter No. 1403, of the 12th ultimo, and to state in reply that they concur in the view taken by the judges of the Western Court of the measures which the zillah judge should have adopted under the circumstances of the case referred to, and that it was not competent to the judge to entertain and enquire into any pleas of the nature of those urged by the mortgager and conditional seller, at the stage and in the manner in which they were brought forward by him.

No. 1180.

A prisoner having been acquitted of the specific charge on which he was tried, the session judge is competent to direct an enquiry into his character as a preliminary to the call for security.

The magistrate of Dinagepore, having doubted the competency of the session judge to direct an inquiry into the character of a prisoner acquitted of the specific charge on which he was tried, the following letter was written in reply to the reference made to the Calcutta Court, the Western Court concurring.

To the Session Judge of Zillah Dinagepore, dated 19*th October*, 1838.

I am directed by the Court to observe that construction No. 823 of the printed constructions, decides the question of the competency of the session judge to call for security from any person acquitted by him of the specific charge on which he may have been tried: and the Court are of opinion that he is equally competent to direct the investigation into character as a preliminary to the call for the security.

October 19*th*, 1838.

To the Judge of Zillah Beerbhoom, dated 26*th October*, 1838.

No. 1181.

It is competent to the civil court to stay the sale of property about to be sold in execution of the collector's summary award, on the motion of a third party claiming it, he having instituted a regular suit for it.

I am desired to communicate to you the opinion of the Court that in cases of the contemplated sale of property in execution of a summary award given by the collector it is competent to the civil court, on the motion of a third party claiming the property ordered to be sold, to stay the sale pending the result of a regular suit instituted by such party to establish his claim.

The Western Court concurred in this construction.

October 26*th*, 1838.

No. 1182.

Principal and interest of a debt must

Held by the Calcutta Court, in concurrence with the Western Court, on a reference from the judge of zillah Jessore, that a person suing for the principal of a debt in a court,

which he knows is not competent to adjudge a larger amount, without at the same time claiming interest, must be presumed to have relinquished his claim to interest. It was further held that in such a case, the plaintiff cannot institute a second suit to recover the interest after having obtained a decree for the principal; as this would amount to splitting the cause of action to render the suit cognizable by a particular court of inferior jurisdiction, which is opposed to the practice of the courts.

he sued for together, in courts of limited jurisdiction, or the claim to interest must be foregone.

November 2d, 1838.

From the Officiating Session Judge of Zillah Dacca to the Register of the Presidency Court of Nizamut Adawlut, dated 8th August, 1838.

No. 1133. 1834. Reg. II. Sec. 2, Cl. 2.

An instance having occurred, of a person being sentenced, under Regulation IX. of 1807, to six months' imprisonment, for a theft of forty-one rupees, and to one year's imprisonment, in lieu of corporal punishment, under Regulation II. of 1834, I address the Court for the following reason.

2. I consider when the law only allows a magistrate to award a punishment of six months' imprisonment, he should not award, in lieu of stripes, more than another six months. I will therefore, if the Court sanction it, address the magistrate and joint magistrate under my authority on the subject.

To the Officiating Session Judge of Zillah Dacca, dated 9th November, 1838.

I am directed by the Court to communicate to you their opinion that the sentence of one year's imprisonment, in lieu of corporal punishment, in addition to six months' imprisonment, passed by the magistrate, is not illegal under the wording of Clause 2, Section 2, Regulation II. of 1834.

The Western Court, on the 12th October, 1838, *concurred in this construction.*

November 9th, 1838.

To the Magistrate of Zillah Behar, dated 9th November, 1838.

No. 1134. 1818. Reg. XII. Sec. 5. 1834. Reg. II. Sec. 2.

I am directed to communicate to you the opinion of the Court, that a magistrate is competent, under the provisions of Section 2, Regulation II. 1834, to award imprisonment for a period of one year in lieu of corporal punishment, in addition to the term he is authorized to award under the 5th Section of Regulation XII. 1818, in the case of a prisoner making his escape while undergoing a sentence of imprisonment under a previous conviction.

The Western Court, on the 12th October, 1838, *concurred in this construction.*

November 9th, 1838.

19 / 30 Nov. 1838.

To the Officiating Session Judge of Dinagepore, dated 9th November, 1838.

No. 1185.

A sudder ameen is not entitled to appeal from the decision of the magistrate in a case originally decided by the former.

I am directed by the Court to communicate to you their opinion, that they do not consider a sudder ameen entitled to appeal from the decision passed by the magistrate in a case originally investigated by the former, the right of appeal possessed by the dissatisfied party being sufficient for the ends of justice.

The Western Court, on the 19th October, 1838, concurred in this construction.

November 19th, 1838.

Extract of a Letter from the Judge of Zillah Mymensingh, under date the 4th September, 1838.

No. 1186.

A pauper decree-holder should be put in possession of the property decreed to him by a Government officer, the cost being made chargeable to the party cast.

Para. 1. May I request of you to obtain the Superior Court's opinion on the following question?

2. Is a person who sues *in formâ pauperis* and obtains a decree, to be put in possession of the property decreed (i. e. land or houses) by means of the officers of the court, and free of expense to him, though the cost may be recoverable afterwards from the losing party or defendant; or is he to be considered liable for the expenses of an ameen or other person employed to give him possession?

To the Judge of Zillah Mymensingh, dated 16th November, 1838.

I am directed to communicate to you the opinion of the Court that a pauper decree-holder should be put in possession of the property decreed to him, by a Government officer, the cost being made chargeable to the party cast.

The Western Court, on the 2d November, 1838, concurred in this construction.

November 16th, 1838.

To the Judge of Futtehpore, dated 30th November, 1838.

No. 1187.

A decree-holder purchasing property sold in satisfaction of his decree, may, under certain circumstances, be permitted to give his receipt for the amount of his claim, in payment of so much of the purchase money.

The Court have again had before them your letter No. 33, under date the 30th June last, requesting their opinion as to whether the civil courts are competent to allow a decree-holder, purchasing property sold in satisfaction of his decree, to file his receipt to the extent of the sum awarded him in lieu of paying the whole amount of purchase money into court.

2. In reply, I am directed to inform you that a decree-holder should be permitted, under the circumstances above stated, to give his receipt for the amount of his claim in payment of so much of the purchase money, provided the arrangement do not interfere with equal claims of other parties, and that, as respects the delivery of possession of the property sold, the same rules are observed in regard to him as would be applied to any other purchaser, and provided also that where the property sold may be land paying revenue to Government, the demands of Government on the estate are previously satisfied.

The Presidency Court concurred in this construction.

November 30th, 1838.

1188.
7 December. 1838.

From the Registar of the Western Provinces to the Registar of the Presidency Court of Nizamut Adawlut, dated 7th December, 1838.

No. 1188.
1806. Reg. XI Sec. 1820 Reg. III.

I am directed by the Court to request that you will submit, for the consideration of the Calcutta Court, the accompanying copies of correspondence noted in the margin,* which has taken place with the session judge and the magistrate of zillah Furruckabad on the subject of Section 8, Regulation XI. of 1806, under which the local officers of police are required to afford assistance, to a certain extent, to travellers, whether European or native, who may be proceeding through their jurisdictions, in procuring the means of prosecuting their journey.

* Letter from session judge of Furruckabad, dated 9th October, 1838, with its enclosure.
Court's reply dated 19th October, 1838.
Letter from session judge of Furruckabad, dated 3d November, 1838, with its enclosure

2. The Court observe, that there is little if any essential difference between the terms of the Section under consideration, and those of Sections 2 and 3 of the same Regulation, which relate to the provision of carriage for troops on the line of march, and in regard to which, so far as they are aware, no doubt has ever been entertained of the rules therein laid down applying equally to a detachment of troops, or a single corps, setting out upon a march, as to one actually *en route*; in fact were that not the case, it would frequently be impossible for a corps to commence its march, to the serious injury of the public service; and they are of opinion therefore that the same principle must be considered equally applicable to a military officer, travelling from one station to another, though not commanding nor proceeding with a corps or detachment of troops, or to any other of the persons described in Section 8, subject to the modification contained in Regulation III. of 1820, which prohibits the compulsory exaction of the services of individuals as porters or coolies in aid either of travellers or marching troops, and that consequently the local officers of police, whether the application for carriage be made to them direct, or to the magistrate, and forwarded by him to them for enforcement, are required to provide the same to the extent of the available number of carts and bullocks, not exclusively appropriated to the purposes of agriculture, and occasionally let for hire, which can be procured within their jurisdiction, that being the only limit laid down in the section in question.

3. With regard to the 10th and 11th paragraphs of Mr. Robinson's letter of the 30th October last, the Court are of opinion that the latter part of the section under consideration, contains a sufficiently general rule for the guidance of the officers therein mentioned, in acting upon which they must exercise their own discretion, taking care, of course, to keep within the law, and leaving any party, who may consider himself aggrieved by their proceedings, to seek redress in the usual manner.

4. At the same time the Court entirely concur with Mr. Robinson as to the illegality and otherwise highly objectionable and improper nature of the practice, referred to by him, of having recourse to personal violence to compel individuals to sell their goods at certain fixed prices, or to serve as boatmen or bearers; and they propose to direct him

strictly to prohibit the practice in his district, if found to exist, for the future, desiring his police officers to adopt the course suggested in the latter part of the 10th paragraph of his letter above quoted, of reporting for such orders, as he may deem proper, any instance of the refusal of individuals to supply travellers with provisions or other articles, furnished under the rule laid down in Section 8, Regulation XI. of 1806, at a reasonable price, or to receive a fair rate of hire for their own services or those of their carts or bullocks.

From the Session Judge of Furruckabad to the Register of the Nizamut Adawlut, Western Provinces, dated 9th October, 1838.

I have the honor to submit a reference from the magistrate of Furruckabad, dated the 8th instant, on the subject of carriage. Mr. Robinson wishes to be informed whether it be legal for a magistrate to press carriage. Regulation III. of 1820 declared the practice of pressing coolies illegal: the Court of Nizamut Adawlut, under date the 5th May, 1820, (construction No. 314) ruled that the rules of Regulation XI. 1806, stand as they were with exception to the prohibition provided in Regulation III. 1820; under the provisions of Section 8, Regulation XI. of 1806, it is ruled the local police officers *should furnish* carts or bullocks required by troops or other person either in the public service or in private affairs, provided such carts or bullocks, not kept for private use, or exclusively appropriated to the purpose of agriculture, but for hire, can be procured within his jurisdiction. It is also ruled that persons in charge of carts and bullocks so provided shall be *at liberty* to return from the first police station in the next zillah unless they *voluntarily agree to proceed further.* It is evident therefore that it is legal for the magistrate to press carriage for the service of troops or other person on the public service or on his private affairs, who may stand in need of assistance to enable him to prosecute a journey, provided a sufficient number of carts and bullocks, not exclusively appropriated to the purpose of agriculture, and occasionally let for hire, can be procured in his jurisdiction. But, as the construction of a Regulation is vested in the Sudder Court, I submit Mr. Robinson's reference for consideration and orders.

From the Magistrate of Furruckabad to the Session Judge of his District, dated 8th October, 1838.

Several applications having been made to me at different times by various civil and military officers employed on civil duties, to procure carriage for them when proceeding on duty or on their private affairs, I beg to know whether in my magisterial capacity I have either of my own, or on application being made from the collector's department authority to press carriage and cattle on that requisition.

I do not allude in this case at all to the provisions of Regulation XI. of 1806, Section 8, which apply to travellers requiring assistance *en route* from local police officers.

But I wish to be informed whether or not it be legal for me as magistrate, to *press* carriage for the service of any private or public person, saving and excepting troops marching, on regular indent signed by the commanding officer.

I cannot find in the Regulations a trace of any such power, the exercise of which constitutes a most harsh and grinding oppression on a hard working class of men, and often seriously interferes, even to ruin, with the prospect of the trader.

But as I know the practise to be by no means uncommon, and I find my refusals to comply with requisitions of the nature above described, expose me to much, in my opinion, of unmerited obloquy and ill-will, I must request the favor of your submitting the point to the Sudder for their opinion and orders.

To take the narrowest view of the subject, if such requisitions are to be enforced on the ground of expediency, which is the only plea I have seen advanced in their favor, I submit that they should at least be as strictly limited, and regulated with as much care as similar requisitions in the Military Department.

From the Register of the Western Provinces to the Session Judge of Furruckabad, dated 19th October, 1838.

The Court have had before them your letter No. 263 under date the 9th instant, with its enclosure from the magistrate of Furruckabad, representing that several applications have been made to him, at different times, by various civil and military officers employed on civil duties, to procure carriage for them when proceeding on duty or on their private affairs, and requesting the opinion of the Court whether it is competent to him of his own authority, or on application being made from the collector's department, to press carriage and cattle on such requisitions.

2. In reply, I am directed to observe that in making the present reference neither you nor Mr. Robinson would appear to have adverted to the Court's circular orders of the 25th November, 1836, No. 23, to which, therefore, I am desired to refer you, as well as to the latter part of the letter addressed by order of the Court under date the 5th May, 1820, to the magistrate of Juanpore, which expressly declares, that with exception to the compulsory exaction of the service of individuals as porters or coolies, in aid of travellers or marching troops, which has been prohibited by Regulation III. of 1820, the rules of Regulation XI. of 1806, remain as before, and to request that, if upon an attentive consideration of the orders and Regulations above mentioned, Mr. Robinson should still entertain any doubts on the subject, he will state the grounds of them more fully, and specify the particular point or points on which he may be desirous of obtaining the opinion of the Court, as well as the Regulations which he considers to be involved in their determination.

From the Session Judge of Furruckabad to the Register of the Nizamut Adawlut for the Western Provinces, dated 3d November, 1838.

I have the honor to forward herewith copy of a further communication, bearing date the 30th ultimo, from the magistrate of Furruckabad on the subject of pressing carriage.

From the Magistrate of Furruckabad to the Session Judge of his District, dated 30th October 1838.

I have the honor to acknowledge the receipt of your letter, No. 282 of the 27th instant, with its enclosures.

2. My reference was on the subject of carriage.

3. I believe I had better set forth in the first instance my construction of the 8th Section of Regulation XI of 1806.

4. I conceive then that the provision applies only to *travellers*, and authorizes the police to aid them only in so far as is necessary to replace their carriage, if it should fail them *en route;* and that the persons authorized and required to aid them are the nearest thannadars, jemadars and burkundazes, whom I understand to be indicated by the words *local* officers, and not the magistrates, and that the amount of assistance is limited to that which shall enable travellers to prosecute their route.

5. And I conceive that the police are not authorized to *press* bullocks and carts, for the word "*compel*" in the Section is restricted to bearers and boatmen, and therefore, that the duty of the police, as far as relates to carriage, is to use their best influence to induce the owners of carts to supply the wants of travellers, but not to employ force for that purpose.

6. The words of the Regulation I think mark this distinction very clearly, the boatmen and bearers are certainly not to be "*compelled*," and in the next number of the sentence, carriage of a certain description is not to be "furnished," and the compulsory power of the local police officers is conferred by the inference, that if they are *not* to compel persons not being ordinarily boatmen and bearers, they *may compel persons who are ordinary boatmen and bearers;* for without this inference, there is no direct authority for using force. The word "aid" used directly in the beginning of the Section cannot certainly be interpreted by itself as giving a power to press. The word "furnish" as applied to carriage admits of no inference that in other cases force may be used, because "furnish" conveys no notion of compulsion.

7. And certainly it appears to me the duty of legal authorities, in construing a doubtful passage of a law founded on expediency, and interfering with the natural right of all subjects to dispose as they please of their own property and labor, to give of two otherwise equally balanced constructions, that which is most favorable to the classes injuriously affected by such law.

8. But let this point be decided how it may, neither the Section nor the interpretation bear upon the point on which I call for instruction. I shall perhaps make my meaning clearer by giving specimens of the kind of applications which are continually addressed to me, and which I hold I am bound to refuse to comply with whenever that compliance may involve the necessity of seizure, or (to put the case more strongly) which I am not bound to comply with at all.

1st. The commissioner of the district requires ten hackeries to proceed on his circuit, and desires the magistrate to furnish them.

2d. The officer conducting surveys applies to the collector for fifteen hackeries to enable him to proceed from pergunnah A. to pergunnah B, and the collector applies to the magistrate to seize them as he cannot procure them through his influence.

3d. A military officer requires two hackeries to march with in order to join his corps at another station, and the same number to convey his family to station A. and desires the magistrate to furnish them.

4th. A civil officer requires thirty hackeries to transport his goods and records to his proper station.

5th. A European merchant arrives at the station by boat and requires sixteen hackeries to transport his goods to station B., and desires the magistrate to supply them.

All the above cases are facts.

9. These are the kinds of cases to which I particularly refer, and in which I maintain that the magistrate has no right to seize carriage; and to sum up the whole question, I would ask whether there be any objection to the issue of the following construction:

"That no person *whatever*, excepting officers commanding or proceeding with a corps, "or a detachment of a corps, is authorized to make any requisition on a magistrate for "the supply of carriage; that the provisions of Section 8, Regulation XI. of 1806, "relate only to travellers during their route; that the amount of aid to be furnished "by the police officers is limited thereby to what is absolutely necessary to enable such "travellers to prosecute their journey; and that though the police officers are bound "to use their best influence to procure the requisite bullocks or carts, they are not "authorised to press them."

10. There is another point which, though unconnected with the reference I have made, I will take this opportunity to submit to the Sudder Nizamut Adawlut, and that is, what are the means by which the police are to compel the services of boatmen and bearers in the event of the recusance? The means now used are personal violence, even to the extent of beating, regulated in its severity by the caprice of the local police officers. I doubt not that the Sudder will pronounce that the course of the police officers is to refrain from such reprehensible measures, and to report all cases of recusancy to the magistrate.

11. In the same way when any person refuses to sell, at the price fixed by the police, supplies of food, it is customary to seize them by force, inflicting personal violence where resistance is made by the owners. It appears to me that this mode of proceeding is utterly illegal, inasmuch as the Regulation contains no authority for the police officers to *compel* any person to sell food or other articles. They are merely directed to aid the traveller in procuring objects required.

12. I will venture to trouble the Sudder for their opinion on these two last points in addition to the reference I formerly made.

13. The circular order to which the Court call my attention relates to the supply of carriage to troops when moving on duty, and on that subject leaves nothing, as far as I see, doubtful or deficient.

The Calcutta Court concurred, 28th December, 1838.

No. 1189. 1811. Reg. VII. Sec. 5.

Held by the Calcutta Court, in concurrence with the Western Court, on a reference from the commissioner of the 19th division, that a person preferring a false and malicious complaint before the darógah, but not sworn to the truth thereof, is not liable to punishment under the provisions of Section 5, Regulation VII. 1811.

December 14th, 1838.

No. 1190. Costs of suit not to be added to the original amount of action, in cases of appeal.

Held by the Calcutta Court, in concurrence with the Western Court, on a reference from the judge of Sylhét, that the practice of estimating the value of the property claimed, in appeal, by adding the costs of suit to the original amount, is improper.

December 14th, 1838.

No. 1191. 1814. Reg. XXVI. Sec. 12.

Held by the Calcutta Court, in concurrence with the Western Court, that Section 12, Regulation XXVI. 1814, is not applicable to cases of appeals, but only to original suits.

December 14th, 1838.

Extract of a letter from the Register of the Western Court to the Register of the Calcutta Court, dated 21st December, 1838.

No. 1192. 1822. Reg. XI. Sec. 38. Cir. Order No. 206, vol. II.

3. The Court observe, however, that in all cases, in which the collector may be made a party in his official capacity, whether against law or not, he must on being served with the prescribed notice, either defend the suit in the usual manner, whatever may be the nature of the plea that he may put in, either denying the jurisdiction, or otherwise, or take the consequences of allowing the cause to be tried *exparte*; and they are of opinion that where, in the former case, he may file his answer through the Government vakeel, the court trying the suit, on nonsuiting the plaintiff's claim with costs, as required by the law above cited, should proceed, as in all other cases, to order the payment of the Government vakeel's fees in the first instance by the collector on the part of Government, leaving him ultimately to recover the amount, in the usual manner, from the party declared liable for the same.

The Presidency Court, on the 18th January, 1839, *concurred in this construction.*

No. 1193. Mode of proceeding when the collector may not conform to the orders of the native judges.

Held by the Western Court, in concurrence with the Calcutta Court, on a reference from the judge of Furruckabad, that it would be objectionable to allow the native judicial functionaries to exercise, at their discretion, the power of imposing fines on the collectors of

their respective districts for not conforming to the orders of their court; and that their proper course, where their orders are not carried into effect, is to report the particular circumstances of each case, as it may arise, to the judge, leaving that officer to take such steps in the matter as he may deem proper consistently with the regulations.

December 21st, 1838.

To the Judge of Zillah Tipperah, dated 28th December, 1838.

No. 1194. 1793. Reg. XLV. Sec. 12.

I am directed by the Court to inform you that the rule laid down in Section 12, Regulation XLV. 1793, regarding the adjustment of the jumma, is applicable only to portions of estates paying revenue to Government directly, and not to shikmee or dependent talooks, the rent of which, payable to the zemindar, is disputed between him and the proprietor of the under tenure. The Court therefore see nothing illegal in the order of the commissioner to the collector (referred to by you) for the omission of the jumma in the sale papers prepared by the latter officer.

The Western Court concurred in this construction.

December 28th, 1838.

No. 1195. Rule regarding demand of security in addition to a specific sentence in a criminal trial.

Held on a reference from the commissioner of the 12th division, that it is not competent to a court of sessions to add a demand of security to a specific sentence passed on a prisoner committed for trial, or to whom a specific punishment has been adjudged on a regular trial by a magistrate.*

Western Court, 16th December, 1836.

Calcutta Court, 17th March, 1837.

Extract from a letter to the Judge of Mymensing, dated 18th November, 1836.

No. 1196. 1806 Reg II. Sec 11.

Para. 2. The provisions of Section 11, Regulation II. 1806, are intended, as appears from the preamble thereof, solely for the relief of insolvent debtors who may be in confinement; consequently Mr. ——— not being in confinement, cannot be relieved from his present difficulties under that Section.

3. Section 10 of this Regulation however expressly provides, that "when no property shall be pointed out from which the judgment can be enforced, and the party against whom it is passed, may be willing to engage for the liquidation of the amount due by instalments, it shall be competent to the court to accept the engagement so offered, and to cause execution of the decree in conformity therewith, as long as the conditions of it shall be duly fulfilled." The previous confinement of the debtor is not necessary in this case; for the Section provides that "if the person delivering the accepted engagement shall have been taken into custody, he shall be immediately released."

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* This and the following constructions were omitted in their proper places.

5. In conclusion I am directed to inform you that under the existing regulations none of the civil courts have the power of granting a general release to a debtor, and that the Government and private individuals are on precisely the same footing in regard to the realization of debts from the property of released insolvents; for the private creditor, under Section 11, Regulation II. 1806, may at any time after the release of the debtor bring to sale any property which may subsequently be found in the possession of the latter.

The Western Court concurred, 26th August, 1836.

From the Register of the Presidency Court of Nizamut Adawlut to the Register of the Western Provinces, dated 4th January, 1839.

No. 1197.
1816.
Reg. XVII. Sec. 18.
1837
Act XXIV.
Secs 2 and 7.
1829
Reg I. 1829, Sec. 3.

A question having arisen in this Court as to the authority through whom the magistrates are required to correspond, in matters relating to the strength and expence of the jail establishments, I am directed to request that you will submit the same for the consideration and opinion of the judges of the Western Court.

2d. By Section 7, Act XXIV. of 1837, the session judges are vested with the same control and superintendence over every jail under the management of any zillah or city magistrate, or joint magistrate, subject to his jurisdiction, and over the officers of every such jail as may have been exercised by the commissioner of circuit, under the provisions of Section 3, Regulation I. 1829, or of any subsequent enactments. The rules here referred to, in no way relate to the strength and expence of the jail establishments; and the Court are therefore of opinion that the correspondence in such matters must still be conducted through the office of the superintendent of police, under the provisions of Section 13, Regulation XVII. 1816, and Section 2, Act XXIV. 1837.

The Western Court concurred, 18th January, 1839.

No. 1198.
1837.
Act XXIV Sec. 7.

Held by the Western Court, in concurrence with the Calcutta Court, that a session judge is vested with the control and superintendence of the jail of the district at which his court may be held, as well as of any district that may be subject to his jurisdiction.

Western Court, 11th January, 1839.
Calcutta Court, 25th January, 1839.

From the Register of the Western Provinces to the Register of the Presidency Court of Nizamut Adawlut, under date the 18th January, 1839.

No. 1199.
1811.
Reg VII Sec 3
1817
Reg XVII
Sec. 6, Cl. 4.

I am directed to request that you will submit the following case, involving a construction of Section 3, Regulation VII. of 1811, and Clause 4, Section 6, Regulation XVII. of 1817, which is now depending before the Court, for the opinion of the Calcutta Court.

2. A prisoner on his trial before the magistrate for the murder of his wife, having pleaded in his defence, and as the motive by which he was impelled to the act charged against him, that an improper intimacy existed between the deceased and the landlord of

the house in which they resided, the magistrate judged it proper to make enquiry into this fact; he, at the same time, directed the evidence of the prisoner to be taken on oath in regard to the charge of adultery advanced by him, and that the investigation into that charge should form a separate and distinct case.

3. The prisoner in his examination on oath before the magistrate, positively swore to the commission of adultery between his wife and the alleged paramour of her guilt, and distinctly charged the latter with that offence, naming his witnesses, whose evidence he prayed might be taken, and that the accused might be visited with proper punishment. The persons indicated by him were accordingly summoned; and their evidence, as well as the result of the enquiries instituted by the magistrate, tending to confirm the prisoner's statement, the accused was committed to take his trial before the session judge on the prosecution of the prisoner for the adultery with the prisoner's wife, and, having been tried and found guilty by that officer on such prosecution, was sentenced to a term of imprisonment.

صرف بهکم بهت کي بدکاري کرني سي هم لي
اپني جورو کون مارا هي گواه اس بات
کي که بهکم بهت ني هماري جوروسي بدکاري
کيا تها دو سالي اور اوسي کي جورو اور
چکريان برهمن و وجنيو باکر هيگي دعوي
بدکاري کرني هماري جوروسي بهکم بهت
رکهتي هس اميدوار هين که طلبي کواهان
مذکورهٔ بالا کي هوکي بعد تحقيقات کي
تدارک مدعا عليه کا هووي

4. The question that now arises is, whether, the charge of the prisoner against the alleged paramour of his wife for adultery not having been preferred by petition, it was competent to the magistrate to institute any enquiries into the fact of the adultery with a view to found thereon a criminal prosecution against the accused and to commit him for trial before the court of sessions; and whether the session judge was authorized in proceeding with the trial of the commitment for adultery made under the circumstances above stated; or whether the absence of such petition does not vitiate the whole of the proceedings both of the magistrate and of the session judge.

5. Mr. Lambert, before whom the case first came, is of opinion that, under the terms of Section 3, Regulation VII. of 1811, it is imperatively required in all cases of adultery the charge should be preferred to the magistrate by petition in the usual form; and looking upon the absence of such petition in the instance in question, as fatal to the legality of the trial, he would quash the whole of the proceedings as well of the magistrate as of the session judge, and order the release of the prisoner, leaving the prosecutor, should he think proper, now to prefer his charge in the manner above stated.

6. The other judges on the other hand, adverting to the object of Regulation VII. of 1811, as expressed in the preamble, viz. to restrict the officers of police from taking cognizance of certain offences, including adultery, which object, they observe, has not in any way been defeated by the course pursued in the present instance, and to the circumstance of the prosecution before the session judge having been on the part of the husband,

18th Jan. } 1839.
15th March, }

which is all that is required by Clause 4, Section 6, Regulation XVII. of 1817, are of opinion that the omission above noticed is not of itself sufficient to vitiate the trial; and they would therefore proceed to dispose of the case on the merits. On this point the opinion of the Calcutta Court is requested.

The Calcutta Court concurred with the majority of the Western Court, 1st February, 1839.

No. 1200.
1813.
Reg. II.

Held on a reference from the session judge of Behar that the case of a peon, on the establishment of a Government functionary, making away with money entrusted to, or collected by him, does not come within the meaning of Regulation II. 1813; and that such offences are to be considered as misdemeanors, and punishable as such under the general regulations.

Calcutta Court, 18th January, 1839.

Western Court, 1st February, 1839.

No. 1201.
1822.
Regulation XI.
Sec. 15.
A bidder who has been fined by a collector cannot institute a regular suit against that authority in the civil court to obtain a refund of the fine.

Held on a reference from the judge of Sylhet that a bidder at a public sale who has been fined by a collector, cannot institute a regular suit against that authority in the civil court to obtain a return of the fine, supposing it to have been levied by distress or otherwise.

Calcutta Court, 15th February, 1839.

Western Court, 8th March, 1839.

No. 1202.
1793.
Regulation XLIX.
1837.
Act XXV. Sec. 8,
1793.
Reg. V. Sec. 7.

Held on a reference from the judge of Mymensing that under the provisions of Section 8, Act XXV. of 1837, an appeal lies to the zillah judge from the decision of a principal sudder ameen in a case under Regulation XLIX. 1793.

Held further that a case of this nature is appealable to the zillah judge on its merits; and not merely on the point of relevancy of the regulation to the summary suit, under the restriction laid down in Section 7, Regulation V. 1793.

Calcutta Court, 15th February, 1839.

Western Court, 8th March, 1839.

To the Session Judge of Mymensing.

No. 1203.
Rule regarding the examination on the part of the prosecution of a witness summoned on the part of the defence, but whom at the trial the prisoner declined to call.

With reference to the trial of the prisoner Amanut Khan, referred with your letter of the 31st January last, I am directed to observe that as the prisoner objected to examining his own witness Ally Khan, alleging that he had been tampered with by the prosecutor, your proceeding to examine him against the prisoner was objectionable.

Calcutta Court, 15th March, 1839.

Western Court, 30th March, 1839.

1204.
15th March 1838.

From the Register of the Western Provinces to the Register of the Presidency Court of Nizamut Adawlut, under date the 15th March, 1839.

No. 1204.

I am directed by the Court to transmit to you, for the purpose of being laid before the Calcutta Court, the accompanying copy of a letter from the session judge of zillah Mynpooree, No. 10, under date the 26th ultimo, and of its enclosure, from the officiating magistrate of that district, on the subject of clauses 9, 10, and 32 of Act XVII. of 1837.

1837. Act XVII. Secs. 9, 10, 32.

2. The view taken by Mr. Begbie of the clauses above cited, appears to the Court to be correct and conformable to the law, and they propose, with the concurrence of the Calcutta Court, to inform that officer accordingly.

From the Session Judge of Zillah Mynpooree to the Register of the Nizamut Adawlut, Western Provinces, dated 26th February, 1839.

At the request of the officiating magistrate of Mynpooree, I have the honor to submit the accompanying copy of a letter addressed to me by that officer under date 1st instant, relative to two cases of conviction by him under Act XVII. of 1837, in which I annulled his orders.

2. I further beg to submit the proceedings in both cases, and to offer the following observations thereon.

3. With reference to the first query of the magistrate I have to observe, that in one of the cases referred to, viz. that of Chota and Kunhye, none of the dawk functionaries were examined by the officiating magistrate, either as prosecutor or witness, nor was there any reference made, throughout the proceedings, to or from the post office department; according to the officiating magistrate's own admission, therefore, the illegality of his proceedings, with reference to Section 32 of the Act, is manifest. In the other case (that of Himmut) the defendant was (as in the preceding case) apprehended by the police, without any application or information from the post office authorities, and examined by the magistrate on the 20th December, Government being made the prosecutor. On the same day a roobakaree was addressed by the officiating magistrate to the post master, directing him to send some person to give evidence, "as prosecutor," and on the 23d December, the Dawk Moonshee attending and giving evidence, the defendant was convicted and punished. Now, this mode of proceeding appears to me to be irregular, and not at all what was contemplated by the Act; which evidently intended that the proceedings should *originate* with the post office authorities; not that the magistrate or his police should, without any application or information from the post office department, apprehend persons offending against the Act. Indeed, I do not understand under what authority the police officers acted in the cases in question, which being simple misdemeanors, and not crimes, are clearly beyond their competence to interfere with; and in apprehending the defendants, they violated the provisions of Clause 3, Section 12, Regulation XX. of 1817. In both cases, likewise, the officiating magistrate kept the defendants in confinement, instead of calling upon them to give bail.

4. With respect to the 2d query, it appears to me, that the sections quoted by Mr. Fagan are imperative as to the amount of fine to be imposed, and that the magistrate has no power to mitigate the penalty therein specified.

5. The 3d and 4th queries have been resolved, since the date of the officiating magistrate's letter, by the enactment of Act II. of 1839, which prescribes the measures to be resorted to for the realization of fines imposed by the magistrate, should other means not have been specially provided by the enactment under which the fine may have been imposed.

From the Acting Magistrate of Zillah Mynpooree to the Session Judge of that District, dated 1st February, 1839.

With reference to your roobukarees of the 18th instant, cancelling the orders passed in the cases noted in the margin, I beg to submit the following points for your consideration, and for reference to the Sudder Nizamut, if necessary.

1st case. Government versus Himmut. 2d case Government versus Chota and Kunhye, conveying an illegal hawk.

1st. To insure the legality of a conviction according to the terms of Clause 32 of Act XVII. of 1837, is it or is it not sufficient for the magistrate to take the deposition, as prosecutor, of the deputy post master, or such person as may be deputed by him for that purpose, in the event of the deputy post master acquiescing in the prosecution, although the offending party may have been apprehended in the act, previously, by the police?

2d. Is it incumbent on the magistrate to impose the full fine of rupees 50 for the offence described in clauses 9 and 10 of that Act, or is it discretionary to impose a fine of less than 50 rupees?

3d. What means is he at liberty to adopt for the realization of the fines mentioned in the Act?

4th. If the fine is not paid, is he competent, as under other regulations, to commute it to a certain period of imprisonment, and if so, what is the period to which the commutation is limited?

The Calcutta Court concurred, 1st April, 1839.

No. 1205.

From the Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, under date the 15th March, 1839.

1818. Reg VIII. Sec. 18. Clauses 4 and 5.

I am directed to transmit to you, for the purpose of being laid before the Calcutta Court, the accompanying copy of a letter, No. 68, under date the 7th instant, from the officiating judge of Ghazeepore, requesting the opinion of the Court, whether in cases in which a landholder may institute a suit for arrears of rent, and at the same time for the ejectment of the tenant from the land in consequence of the arrear sued for being due, the amount of stamp should be computed according to the value of the land, together with the amount of arrear, or merely with reference to the latter?

2. The Court propose, with the concurrence of the Calcutta Court, to inform Mr. Heyland that they do not very clearly understand how the question submitted by him, as above stated, can arise. They remark that under the provisions of clauses 4 and 5, Section 18, Regulation VIII. of 1819, the landholder must first establish by a suit, either summary or regular, the existence of an arrear before he is at liberty to cancel the lease of an under tenant, while as regards khodkhasht ryots, they have also the power of immediately paying into court any sum adjudged to be due from them before they can be ejected.

3. With regard to a suit brought by a resident cultivator against his landholder to obtain a reversal of a summary decision passed by a collector, adjudging a balance to be due from him, and to regain possession of his jote from which he may have been ejected consequent on such decision, the Court propose to refer Mr. Heyland to the letter addressed by them under date the 7th February 1834, to the judge of zillah Mynpooree, No. 862 of the construction book, as explaining the manner in which such suits should be estimated.

4. The Court further propose, as connected in some measure with Mr. Heyland's present reference, to refer him to the letter addressed to the judge of zillah Burdwan on the 6th July 1832, No. 702 of the construction book, by which it has been ruled that though the land included in an ijarah or a jote of a cultivating ryot is not transferrible by sale, the interest of the party claiming the ijarah or jote is capable of being valued; and that the plaintiff should be allowed in such cases to lay his suit at the amount which he may consider the value of his interest in the thing claimed. The Court see reason from Mr. Heyland's letter to believe that this distinction has not been sufficiently attended to by him.

From the Officiating Judge of Zillah Ghazeepore to the Register of the Sudder Dewanny Adawlut, Western Provinces, dated 7th March, 1839.

I shall feel obliged by your soliciting the opinion of the Court of Sudder Dewanny Adawlut, whether it is necessary on a landholder instituting a suit for arrears of rent, and at the same time for the ejectment of the ryot from the land merely in consequence of the arrears sued for being due, that the amount of stampt paper should be computed according to the value of the land, together with the amount of arrears claimed, or merely according to the arrears.

2. There are many cases of this description, and the rule in this district has been that the amount of stampt paper in such cases should be computed according to the arrears, together with the value of the land. I am of opinion that it is not required that the amount of value of the land should be added, where the right to the land is not questioned and does not come under investigation; the mere question, whether the arrear is due or not, being the point in dispute, particularly as by Section 18, Regulation VIII. of 1819, it would appear that if the arrear was not paid the plaintiff was at liberty of his own authority to cancel the ryot's lease, on its having been adjudged to be due, thus making the second part of the action unnecessary and entailing a very serious extra expence on the ryot.

15th March } 1839.
1st April }

3. I beg to observe that there was a reference made by my predecessor on the 19th July 1837, on the subject of stampt paper required in suits instituted by landholders for possession, and a reply was made by the Court on the 12th September 1837, stating that the amount should be computed according to the value of the land; but I conceive that the subject of suits of the above description was not in contemplation by the Court.

4. I shall feel much obliged by an answer to this question, which is one of some moment; and as the decisions of most cases of this description are final in this court, there is no other mode of knowing what may be the opinion of the Court of Sudder Dewanny Adawlut.

The Calcutta Court concurred, 12th April, 1839.

No. 1206.

Regarding the competency of an officer holding a special sessions for the trial of a party committed by the civil judge, to order the judge to commit any other person who may appear to have been implicated in the same offence.

On a question arising, whether on the occasion of the commitment of a prisoner by a civil judge, for trial before a special sessions, the officer holding such sessions is competent to direct the judge to commit any other party who may appear from the evidence to be implicated, or whether his powers are restricted to suggesting the expediency of such a course, leaving its adoption to the discretionary option of the judge, it was held that under such circumstances the compliance of the judge is optional.

Calcutta Court, 1st April, 1839.
Western Court, 26th April, 1839.
Letter issued to Judge of Cuttack, 24th May, 1839.

No. 1207.

From the Register of the Presidency Court of Sudder Dewanny Adawlut to the Register of the Western Provinces, under date the 1st April, 1839.

1814.
Reg. XXVIII.
Secs. 12 & 13.

I am directed by the Court to request that you will lay before the judges of the Court of Sudder Dewanny Adawlut for the Western Provinces, the accompanying extract from a letter from the judge of Jessore, dated the 19th June last.

2. The Court propose to inform the judge of Jessore, with the concurrence of the Agra Court, that in their opinion the rules contained in Sections 12 and 13, Regulation XXVIII. of 1814, are applicable to any pauper appellant, whether he was a pauper in the original suit or not. If however the appellant appeared originally as a pauper, he would of course be at liberty to file a copy of the decree of the lower court on plain paper, being entitled to such copy under Section 8 of the same Regulation.

Extract from a letter from the Judge of Zillah Jessore, under date the 19th June, 1838.

Para. 6. Whilst on this subject I take this opportunity of requesting the opinion of the Superior Court, in order to satisfy a doubt that has arisen in my mind regarding the actual meaning of Sections 12 and 13 of Regulation XXVIII. 1814. Is it intended that the provisions of Sections 12 and 13 of the Regulation should be made applicable to a *pauper* plaintiff desirous of appealing *in formâ pauperis* from the decision passed on his original suit, or are they only applicable to a person, *not originally* admitted as a pauper, but desirous of appealing as such?

7. On the above question I should be obliged by the opinion of the Court, as I am of opinion that, on the principle laid down in Section 14 of the said Regulation, (wherein an original pauper plaintiff is allowed to respond to an appeal made against him, as a pauper and without any further enquiry,) the provisions of Sections 12 and 13 are only applicable to persons not originally admitted as paupers, and not to *pauper* plaintiffs desirous of appealing *in formâ pauperis*, to whom however I find it has been the custom of this court to apply them, such pauper plaintiff or appellant being, I conceive, at liberty to prefer his petition of appeal on plain paper and without any further enquiry.

From the Officiating Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, under date the 28th April, 1839.

I am directed to acknowledge the receipt of your letter No. 890, dated 1st instant, with annexed extract of a letter from the judge of Jessore, requesting the opinion of this Court as to the applicability of the rules contained in Sections 12 and 13, Regulation XXVIII. of 1814, to pauper appellants, and in reply, to inform you that the Court concur in the view taken by the Court at the Presidency, that, whether the party appealing as pauper was or was not a pauper in the original suit, the rules in question must still be binding on the appellant, who, however, if he appeared originally as a pauper, would be entitled to the privilege conferred by Section 8 of the Regulation quoted in respect to filing a copy of the decree.

No. 1208.

1811
Reg. VII Sec 5.

Held that a merely litigious appeal is not punishable by the magistrate under the provisions of Section 5, Regulation VII. of 1811; but that in the event of a prosecutor, whose case has been dismissed by a subordinate court, persisting in bringing before the magistrate a charge evidently malicious or greatly exaggerated, it would be competent to that functionary to punish him under the above cited law.

Calcutta Court, 1st April, 1839.
Western Court, 21st June, 1839.
Letter issued to the Magistrate of Patna, 2d August, 1839.

No. 1209.

A civil judge not competent to call upon the magistrate to enforce his orders when resisted.

Held that it is not competent to a civil judge, in cases of resistance of the process of his court, to call upon the magistrate to enforce his orders, but that he must pursue the course laid down in the regulations.

Calcutta Court, 12th April, 1839.
Western Court, 3d May, 1839.
Letter issued to Judge of Sarun, 31st May, 1839.

From the Officiating Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 26th April, 1839.

No. 1210.

1833.
Reg XII Sec. 2 Clause 3.

A question having arisen respecting the construction of Clause 3, Section 2, Regulation XII. of 1833, I am directed by the Court to request that you will ascertain and communicate the opinion of the Calcutta Court on the following point.

2. Under the terms of Clause 3, Section 2, Regulation XII. of 1833, is it competent to the Court to authorize, an application being made to that effect, the employment, by a party, of more than one general agent, not being authorized pleaders, for the purpose of conducting generally all suits or other business before the Court; or is the number, under that rule, confined to one?

3. The majority of the Court are of opinion that the clause above quoted contains no limitation of the nature described. Mr. Monckton, on the other hand, thinks that it must be construed to restrict the licence granted by the Court to one general agent, and, the object of the provision appearing to be to enable parties to employ a confidential agent, who, should he require legal aid, can associate with himself any authorized pleaders of the Court, considers any excess beyond the number of one as objectionable.

4. In the event of your Court concurring with the majority of this Court, that more than one agent can be appointed, I am directed to suggest whether it would not be desirable that the party appointing such agents should be required to state in his power of attorney that he acknowledges any acts jointly and severally performed by them, in the discharge of their duties as agents, to be binding on him. If the Presidency Court should agree as to the general question, the Court propose, with their concurrence, that the above condition be required in all mookhtarnamahs of the sort described.

From the Register of the Presidency Court of Sudder Dewanny Adawlut to the Officiating Register of the Western Provinces, dated the 10th May, 1839.

I am directed by the Court to acknowledge the receipt of your letter No. 679, under date the 26th ultimo, and in reply to state, that they concur in the opinion of the majority of the judges of the Western Court, that the provisions of Regulation XII. 1833, authorize the employment by parties of more than one general agent for the conduct of suits and other business.

2. The Court approve of the suggestion, that parties appointing more than one general agent be required to declare their responsibility for the acts jointly or severally done by such agents, in the discharge of their duties, and will adopt the same as a rule of practice.

No. 1211.

1826
Reg X. Sec. 3.

Held that scraping a salt chur with a view to collect salt earth, is not an offence punishable under the provisions of Section 3, Regulation X. 1826.

Western Court, 19*th April,* 1839.
Calcutta Court, 10*th May,* 1839.

No. 1212.

Liability of the crops on chowkeedaree lands to sale, in execution of decrees given against their owners.

Held on a reference from the session judge of Beerbhoom, that crops grown on lands allotted to village chowkeedars for their maintenance cannot be exempted from liability to sale, in satisfaction of decrees issued against their owners.

Western Court, 19*th April,* 1839.
Calcutta Court, 12*th July,* 1839.

1213.
3d May 1839.

From the Officiating Register of the Western Provinces to the Register of the Nizamut Adawlut, under date the 3d May, 1839.

No. 1213.
1822. Regulation VIII.

With reference to the annexed extract of a letter from Mr. R. C. Glyn, session judge of Meerut, transmitting proceedings on the trial of Ghasee and others, charged with murder by thuggee, and other offences therewith connected, I am directed to request that you will bring the following points to the notice of the Presidency Court for their consideration and opinion.

2. This Court are of opinion that, in the case referred to, the judge of Meerut was not competent, under any act at present in force relating to the crime of thuggee, to try the prisoners Nos. 1 to 14 on the specific charges of murder and plunder contained in the first and second counts, such acts having been committed in the Umballa territory within the jurisdiction of the political agent, without first obtaining the authority of Government; and that, by consequence, he could not try the prisoners Nos. 15 and 16 for being accessories after the fact.

3. Similarly it was beyond the competency of Mr. Glyn in the absence of the authority referred to, or of that of the Nizamut Adawlut under the provisions of Regulation VIII. of 1822, to enter upon the trial of Nos. 15 and 16 on the charge of buying children from thugs, knowing them to have been unlawfully obtained, or of No. 17 for aiding and abetting in such sale, both of which offences were perpetrated in the district of Kurnaul, within the jurisdiction of the session judge of Dehli.

Extract of a letter from R. C. Glyn, Esq. Session Judge of Meerut, No. 17, dated 7th January, 1839, to the Register of the Nizamut Adawlut, North Western Provinces.

Session Judge's Court, Zillah Meerut.

Trial No. 5, of a Calendar of prisoners, committed in A. D. 1838-39.

Government ..... *Prosecutor,*

versus

1. Ghasee, son of Goorbux,
2. Chotee, ditto ditto,
3. Goorbux, ditto ditto,
4. Karee, wife of Goorbux,
5. Roopla, son of ditto,
6. Geeanee, wife of Nowla and daughter of Hurree Sing,
7. Toolseea, son of Nowla and Geeanee,
8. Nuthoo, son of Doda,
9. Koosalee, mother of Nuthoo and daughter of Isisa,
10. Kheana, son of Munsa,

11. Mohoroo, son of Kheeana,
12. Bhugwandas, son of Bhoja,
13. Chynee, wife of Bhugwandas,
14. Lallee, wife of Kaner Das,
15. Dhean Sing, son of Hakoma,
16. Mallon, son of Chedda,
17. Than Sing, son of Birja,—*Prisoners.*

Charge—1*st Count.*—Nos. 1 to 14 for the wilful murder by strangulation (commonly called thuggee) of Sookloll and his wife, Mohun Lall and his wife, Bucktoo, Thakoor Das, and Chobee his wife, of the Brahmin caste; Nuthoo and his daughter Luchmee, of the Chamar caste; and two other people of the Jat caste, relations of Hoosein Bux, on the banks of the Jumna, near the city of Thanaisur, in the Umballa States, on or about the month of October, 1837.

2*d Count.*—For plundering them of the whole of their children and property.

3*d Count.*—Nos. 1 and 2 for being professional Lughardors or stranglers.

4*th Count.*—No. 3 for being a sirdar of a gang of thugs, by profession.

5*th Count.*—Nos. 1 to 14 for being professional thugs and thugnees who gain their livelihood by murdering travellers and disposing of their offspring.

1*st Charge.*—Nos. 15 to 16 for being accessories after the fact and purchasing the children from the thugs knowing them to have been unlawfully obtained.

1*st Charge.*—No. 17 for aiding and abetting in the sale of the children and receiving a profit on every one disposed of.

The Calcutta Court concurred 17*th May*, 1839.

No. 1214.

1793.
Reg. IV. Sec. 25.

Held that a fine imposed under the provisions of Section 25, Regulation IV. of 1793, may be levied under the same rules as are applicable to the execution of decrees of court, that is, either by sale of the property of the individual on whom the fine is imposed, or by the imprisonment of the individual.

Calcutta Court, 3*d May*, 1839.
Western Court, 24*th May*, 1839.

No. 1215.

1834
Reg. II. Sec. 3. Clause 1.

Decided by the Government, in concurrence with the majority of the Calcutta Court, on a reference from the session judge of the 24-Pergunnahs, that a prisoner sentenced to imprisonment for escaping from jail, is entitled to exemption from labor on payment of a fine, under the provisions of Clause 1, Section 3, Regulation II. 1834, for the period of his confinement for that specific offence.

Calcutta Court, 10*th May*, 1839.
Letter of Secretary to Government, Judicial Department, 1*st August*, 1839.

17th / 31st } May, 1839.

From the Officiating Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, under date the 17th May, 1839.

No. 1216.

With reference to a question put to them by the judge of Futtehpore, as indicated in the margin,* I am directed by the Court to request that you will bring the same before the Court at the Presidency for their opinion thereon.

* "Whether persons on whom a summons has been issued to answer a charge of resistance of process, are at liberty to answer a charge through a vakeel without appearing in person"

Ruled in the affirmative.

2. This Court propose, with your Court's concurrence, to inform the judge that, as the object of a summons, in the case referred to, is to give the summoned party an opportunity of defending himself against the charge, which is distinct from ordering his apprehension after conviction, in consequence of non-payment of any fine that may have been imposed, with a view to his imprisonment in jail, they are of opinion that a person summoned on the charge described is clearly at liberty to answer such charge through a vakeel, without being obliged to appear in person.

Calcutta Court concurred, 7th June, 1839.

No. 1217.

A question having arisen whether, on the rejection under Clause 3, Section 12, Regulation XXVIII. 1814, of a petition suing to appeal as pauper, the petitioner having been admitted as a pauper in the lower court, the party so rejected, receiving back his copy of the decree of the inferior court, which he obtained on plain paper, and being desirous of instituting his appeal in the manner provided for by clause 4 of the same section and regulation, may accompany his petition of appeal with the copy on plain paper above mentioned, or whether he must obtain a fresh copy of the decree on the prescribed stamp in the mode required from parties who were not paupers in the lower court, it was held that under the circumstances stated, a pauper may accompany his petition of appeal presented under Clause 4, Section 12, Regulation XXVIII. 1814, with a copy of the decree of the lower court on plain paper.

1814
Reg XXVIII
Sec 12, Cl 3 and 4

Western Court, 17*th May,* 1839.
Calcutta Court, 21*st June,* 1839.

No. 1218.

Held on a reference from the judge of Mymensing, that a Hibeh-nameh, or deed of gift, could not be registered after the death of the donor, and that the register of deeds was quite right in refusing to register it.

1793
Reg XXXVI
Sec 9
1813
Reg XX Sec 2.

Western Court, 24*th May,* 1839.
Calcutta Court, 21*st June,* 1839.

No. 1219.

Held that Act I. of 1839, does not deprive moonsiffs of the power of selling property in satisfaction of decrees, passed by themselves in regular suits for recovery of arrears of rent.

1839
Act I.

Calcutta Court, 31*st May,* 1839.
Western Court, 21*st June,* 1839.
Letter to Judge of Cuttack, issued 2d August, 1839.

From the Officiating Register of the Western Provinces to the Register of the Presidency Court of Nizamut Adawlut, dated the 31st May, 1839.

No. 1220.

1811. Reg. VII. Sec. 5.

I am directed, to forward, for submission to the Calcutta Court, the accompanying copy of a letter from the session judge of Meerut, and of its enclosure, and to request that you will obtain the opinion of the Court on the subject discussed therein.

2. The Court propose to inform Mr. Glyn, should your Court concur, that they consider the view taken by him of the question to be correct, and that the magistrate possessed no authority to award punishment for a false complaint made before the revenue authorities, no case connected with such complaint having originated in his court; that officer's power being, in the Court's opinion, restricted to the cognizance and disposal of those cases alone that have been primarily instituted before him.

From the Session Judge of Zillah Meerut to the Register of the Nizamut Adawlut, Western Provinces, dated the 22d May, 1839.

I request you will do me the favor to obtain the Court's construction of Section 5, Regulation VII. of 1811, as to whether it is applicable to charges preferred before a collector, and then, as being false and malicious, transferred by an order of his revenue court into the court in which he presides as magistrate, and therein disposed of; or whether the vexatious charges must not in the first instance be preferred in the magistrate's court, according to the letter of the Regulation above quoted, to render the authors of them liable to the prescribed penalties.

2. An individual preferring a false charge in a magistrate's court, and a collector transferring a similar charge from his own into the magistrate's court, appear to be acts sufficiently distinct; and a specific rule providing a penalty in the one case, does not necessarily apply to the other.

The Presidency Court, on the 5th July, 1839, concurred.

From the Officiating Register of the Western Provinces to the Register of the Presidency Court of Nizamut Adawlut, dated the 31st May, 1839.

No. 1221.

1801. Reg III. 1817. Reg. XVII. Sec. 14.

I am directed by the Court to request that you will lay before the Calcutta Court, for their consideration and opinion, the accompanying copy of a letter from the officiating session judge of Ghazeepore.

2. This Court propose to inform the session judge, with the concurrence of the Court at the Presidency, that the course followed by him, in the case to which his communication refers, was the correct one, and that he is competent to enter upon the trial, the commitment having been made by the magistrate and not by the civil judge.

1221—1223

31st May } 1839.
7th June }

From the Officiating Session Judge of Zillah Ghazeepore to the Register of the Nizamut Adawlut, Western Provinces, dated the 22d May, 1839.

Government versus Silwut Row and Hingun Khan.

The defendants in this case were committed by the magistrate and are charged with forgery and fraud and subornation of the same for filing or causing to be filed a solahnameh in the civil court, purporting to have been on the part of Soobrattee, plaintiff, and causing the case which was pending there to be decided accordingly.

In consequence of the document in question having been filed in a case that was pending in the civil court, I was in doubt whether I should not myself have committed the parties to take their trial under the provisions of Regulation III. of 1801, and Section 14, Regulation XVII. of 1817, and requested the permission of Government to refer the case for trial to some other district. The regulations in no way direct the adoption of the mode in cases of this species of fraud; but from the Court of Nizamut Adawlut's Circular, of the 5th December, 1828, it appears that by analogy a magistrate is not competent to receive a complaint of forgery in a case before the civil court, and in the latter clause it states, "unless the civil court may direct a prosecution for forgery or give permission to the aggrieved party to prosecute." Under these circumstances I sent the case to the magistrate, directing that, in the event of his considering that there was sufficient evidence, he should commit the parties to take their trial at the sessions. The magistrate consequently has committed the case, but previous to hearing it and passing any orders I shall feel obliged by your informing me whether, under these circumstances, I am competent to do so, or whether, as civil judge, it is necessary that I should myself commit the prisoners to take their trial, and solicit the permission of Government to refer the case to some other district.

The Calcutta Court concurred, 5th July, 1839.

No. 1222.

1795 Reg VII Sec 33
Reg XX Sec 13.
1808 Reg XXVI Sec 25.
1829 Reg XI Sec 21
1830 Reg. VII Sec 7, Clause 1

Held that there is nothing in the law as it now stands to warrant the imposition, on a first purchaser of a permanently assessed estate sold for arrears of revenue, who may fail to fulfil the conditions of sale, of any other penalty than the annulment of such sale, and the forfeiture of the amount paid.

Western Court, 3d June, 1839.
Calcutta Court, 5th July, 1839.

No. 1223.

1831. Reg V Sec 22
1832 Reg VII Sec. 7.

Held that as by Section 7, Regulation VII. of 1832, the rule regarding the execution, by principal sudder ameens, of their own decrees, contained in Section 22, Regulation V. of 1831, is declared applicable to all sudder ameens and moonsiffs who may be appointed under the latter Regulation, and as the first named Section unqualifiedly declares that decrees passed in the courts of principal sudder ameens "shall be executed" by those courts, without any reservation or exception, a civil judge is not competent to transfer, of his own authority, to the principal sudder ameen, applications for the

execution of moonsiffs' decrees, (such moonsiffs having been appointed under the provisions of Regulation V. 1831,) and that all decrees passed by moonsiffs must, under the above law, be enforced by those officers, except under such circumstances as would have precluded them by law from themselves hearing and determining a regular suit.

Western Court, 7th June, 1839.
Calcutta Court, 12th July, 1839.

No. 1224.

1828 Reg. VII. Sec. 20.

Held, with advertence to the terms of Section 20, Regulation VII. 1828, that there is nothing to bar the cognizance under it, by the native commissioners appointed according to that Regulation, of suits for the rent, revenue, or produce of lakhiraj lands.

Western Court, 14th June, 1839.
Calcutta Court, 12th July, 1839.

No. 1225.

1817 Reg XVII. Sec. 14, Clause 2.

Held on a reference from the session judge of Benares, that it is not competent to a civil judge to commit for trial any party to a civil suit, or other person, on a charge of fraud; but that he should make over the case to the magistrate, with a view to that officer's investigating the charge, and disposing of it himself, or, if committable under the Regulations, committing it at his discretion for trial at the sessions.

Western Court, 14th June, 1839.
Calcutta Court, 12th July, 1839.

No. 1226.

1814 Reg XXVI Secs. 10 and 12. 1831. Reg V. Sec. 18, Cl. 4, and Sec. 21.

Held on a reference from the judge of Goruckpore that Sections 10 and 12, Regulation XXVI. 1814, though applicable to the courts of the principal sudder ameens, are not applicable to those of the sudder ameens and moonsiffs.

Western Court, 21st June, 1839.
Calcutta Court, 2d August, 1839.

From the Officiating Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, under date the 21st June, 1839.

No. 1227.

Question regarding the legality of detaching the materials of a building for the purpose of bringing them to separate sale in execution of a decree.

A question having arisen as to whether, in executing a decree, if no purchaser be forthcoming for a house as it stands, and individuals should signify their willingness to purchase the materials, it is legal to detach or cause them to be detached from the building for the purpose of bringing them to separate sale, I am directed to request you will obtain the opinion of the Calcutta Court on the point.

2. The opinion of this Court is that such a proceeding is not warranted by law, which seems to require that the property should suffer no detriment in any way prior to sale, the auction purchaser being of course at liberty, on his own responsibility, after the purchase may have been concluded, to remove any part of the same, being at the same time answerable to any other claimants who may contest the extent of right acquired by him at sale.

3. The Court observe that no hardship could result from the observance of the above rule, as under the construction recently adopted by both Courts (circulated by this Court under date 18th January last) the decree-holder would always have the option of himself becoming the purchaser by filing his receipt for the amount of his claim.

4. The same principle, the Court remark, would apply to the case of trees in a similar predicament, which ought not to be cut down till after they shall have been sold.

The Calcutta Court concurred, 2d August, 1839.

No. 1228.
1814.
Reg. XXIII Sec. 27, Clause 2. Construction 870, answer to query 6th 1838
Acts VII. and XXII.

Held on a reference from the officiating judge of Goruckpore, that under Acts VII. and XXII. of 1838, the provisions of Clause 2, Section 27, Regulation XXIII. of 1814, and the printed construction thereon of the 21st February 1834, must be considered as virtually superseded.

Western Court, 28th June, 1839.
Calcutta Court, 2d August, 1839.

From the Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, under date the 5th July, 1839.

No. 1229.
1814
Reg XXVI Sec. 4. 1839
Act IX.

Letter from Mr. Harington, No. 108, dated 7th ultimo. Ditto in reply, from Court, No. 1037, dated 14th ditto. Ditto from Mr. Harington, No. 117, dated 25th idem.

I am directed to request that you will lay before the Calcutta Court, for their consideration and opinion, the accompanying copies of correspondence connected with a reference made to this Court by the officiating judge of Goruckpore.

2. With respect to the first question on which the judge has asked their opinion, I am desired to say that the Court propose to inform him that they consider his view to be correct, and that petitions to sue as pauper, remaining undisposed of at the date of Act IX. of the present year coming into force, must of course be considered subject to the rules provided by that law.

3. As to the second point, however, stated by Mr. Harington, this Court do not concur in the opinion which he has expressed thereon, and would acquaint him, with your Court's concurrence, that under the circumstances described in his 3d paragraph, he is not, in their judgment, competent to admit, of his own authority, a second application after the rejection of the first, but must treat it as a petition for a review of his orders, and proceed accordingly.

From the Officiating Judge of Zillah Goruckpore to the Register of the Sudder Dewanny Adawlut, Western Provinces, dated the 7th June, 1839.

There are two points connected with the operation of Act IX. of the present year, on which I am desirous of obtaining the opinion of the Court of Sudder Dewanny Adawlut, and have to request the favor of your laying this letter before the Court with that object.

2. ' The first is, whether the provisions of the Act in question, are to be considered applicable to petitions to sue *in formâ pauperis* presented under Regulation XXVIII. of 1814, but which remained undisposed of at the date of the promulgation of the recent enactment.

And the second, whether the application of a party to institute a suit *in formâ pauperis* having been rejected by the judge, under the discretionary power vested in him by the first section of the Act, in consequence of there not appearing to him to be probable cause for instituting the suit, the judge is competent to receive one, of his own authority, to admit a second application from the same party relating to the same matter, either urging fresh grounds for the institution of his suit, or supplying any omission or correcting any thing which may have led to the rejection of his first application; or whether such second application must be looked upon by the judge as an application for a review of his first order, and treated accordingly.

3. With regard to the first point, the law distinctly declares that no person shall be hereafter entitled to institute any suit *in formâ pauperis* unless upon certain conditions, therein detailed; and however severely such a construction may operate as regards pending applications presented previously to the passing of the Act, the terms of it are so general and imperative that, under a strict interpretation of the law, it must, I conceive, be held to include such applications. Regulation XXVI. of 1814 and Regulation II. of 1825, and that part of Regulation V. of 1831, which relates to the finality of the decisions of the zillah judge in appealed suits from the sudder ameens and moonsiffs, were, I have reason to believe, construed in a similar manner on their promulgation, so that precedents are not wanting to support the opinion which I have above expressed.

4. With regard to the second point, I am disposed to think that the zillah judge may receive such second application under the circumstances stated by me, and that in the event of the petitioner being able to satisfy him, in the manner laid down in the Act, that there is probable cause for his instituting his suit, it would be competent to the judge, of his own authority, to comply with the petitioner's application to sue as a pauper.

The Calcutta Court concurred, 2d August, 1839.

No. 1230.

Registry of deeds written in the Persian language.

Held on a reference from the judge of Allahabad, that officers appointed to register or authenticate deeds, would not be justified in refusing to attest or register any document presented to them for that purpose, by reason of its being written in the Persian language.

Western Court, 5th July, 1839.
Calcutta Court, 2d August, 1839.

No. 1231.

Joint magistrates are competent to try

Held on a reference from the session judge of Dacca that as, under paragraph 6 of the orders of Government dated 1st November 1831, joint magistrates are

19th } July, 1839.
19th }

competent and required to exercise the full powers of magistrate unless interdicted from the exercise of such powers by their superior, they are empowered to try appeals from the orders of the sudder ameens in petty criminal cases.

appeals from the decisions of sudder ameens in petty criminal cases.

Calcutta Court, 12*th July*, 1839.
Western Court, 9*th August*, 1839.

No. 1232.

Held on a reference from the magistrate of Muttra, that a magistrate is not empowered to offer a pardon to any person charged with participating in a crime committed in a district in which such magistrate has no jurisdiction.

1824.
Reg. X. Sec. 3, Cl. 1.

Calcutta Court, 12*th July*, 1839.
Western Court, 22*d November*, 1839.

No. 1233.

Held on a reference from the session judge of Hooghly, that the rules contained in the circular orders of the Nizamut Adawlut, Nos. 70 and 74, volume I. and construction No. 734, are equally applicable for the enforcement of a security bond, executed before a magistrate by a person engaging to produce in his court a party charged with a criminal offence.

Rule for the enforcement of a bail-bond.

Calcutta Court, 19*th July*, 1839.
Western Court, 9*th August*, 1839.

No. 1234.

Held on a reference from the session judge of Midnapore, that a magistrate is competent to refer to a joint magistrate, not holding independent jurisdiction, criminal cases for report, though, with reference to the respective powers of those officers, the measure should be resorted to as seldom as possible.

Competency of a magistrate to refer to a joint magistrate criminal cases for report.

Calcutta Court, 19*th July*, 1839.
Western Court, 9*th August*, 1839.

No. 1235.

Held on a reference from the judge of Dinagepore, that the processes of the principal sudder ameens and sudder ameens, required to be enforced in another zillah, should be issued under their seal and signature, as prescribed by clause 4, Section 15, Regulation V. of 1831, and with reference to clause 3, Section 2, Regulation II. 1806, be sent by the sudder ameen to the judge of the zillah or city court in which they are to be executed.

1831.
Reg. V. Sec. 15, Cl. 4.
1806.
Reg. II. Sec. 2, Cl. 3.

2. The processes of the moonsiffs' courts intended to be served in another zillah, should be issued through the channel and under the signature of the judge.

Western Court, 19*th July*, 1839.
Calcutta Court, 9*th August*, 1839.

19th July, 2nd Aug. } 1839.

No. 1236.

1814 Reg XXVI. Sec. 15, cl. 8, 1825. Reg VII. Sec. 7.

The following reference was made by the judge of Futtehpore:

"Whether in cases in which an ittelanameh in lieu of a hookemnameh has been issued for the defendant to shew cause, &c. under Regulation XXVI. of 1814, Section 15, Clause 8, and Regulation VII. of 1825, Section 7, and such defendant be not met with, it is then incumbent on the court issuing the process, to issue a proclamation or not?"

It was held that on the contingency contemplated by the judge, viz. the failure to serve a notice on the party, occurring, it is incumbent to issue a proclamation, but that the object would be best answered by including its purport in the notice, which should be accompanied by a perwanneh to the nazir, instructing him, in the event of personal service being impracticable, to affix the process to the defendant's house.

Western Court, 19th July, 1839.
Calcutta Court, 16th August, 1839.

No. 1237.

"Receiving stolen goods," a bailable offence.

Held on a reference from the commissioner of Delhi, that the offence of "knowingly receiving stolen property" is a bailable offence: and that on any person being apprehended on the distinct charge of receiving stolen goods, the original theft of such property not forming part of the charge, he should be allowed the option of giving bail.

Western Court, 19th July, 1839.
Calcutta Court, 16th August, 1839.

No. 1238.

Embezzlement, a bailable offence.

Held on a reference from the session judge of zillah Juanpore, that embezzlement is a bailable offence, and that consequently a person confined on that charge should have the option accorded him of furnishing bail and obtaining his enlargement from restraint.

Western Court, 19th July, 1839.
Calcutta Court, 16th August, 1839.

No. 1239.

1837. Act XXIV. Sec. 5.

Held on a reference from the session judge of Dacca, that an order passed by a magistrate to prevent persons going about at night after a fixed hour, is appealable to the session judge under the provisions of Section 5, Act XXIV. 1837.

Calcutta Court, 19th July, 1839.
Western Court, 20th September, 1839.

No. 1240.

1818. Reg VIII. Sec. 6.

Held that the removal of prisoners, confined in a criminal jail on a requisition of security for good conduct, to another district, for the purpose of being induced to give evidence as approvers, before the authorities appointed for suppressing dacoitee, is illegal.

But if prisoners, thus confined, have no objection to be removed to the jail of another district for the sake of giving evidence, the Court of Nizamut Adawlut may sanction their removal.

Western Court, 2d August, 1839.
Calcutta Court, 30th August, 1839.

No. 1241.
1816.
Reg. XIII.
1824.
Reg. VII.
Power of a magistrate to search a house for opium under the circumstances stated.

The following case was submitted for opinion by the magistrate of Cawnpore.

"Opium, the produce of any cultivator's field, by law must be wholly given up to the opium agent. A portion of that opium being retained contrary to law, the retainer's wife in a fit of momentary anger poisons herself: can a magistrate search the retainer's house for the remainder of the opium, and in case of finding it, make it over to the collector for confiscation, or not?"

It was held by the Western Court that a magistrate possesses no authority, according to the law, to interfere with the object set forth, and beyond giving information to the opium authorities, could not act without receiving a regular application from the department.

The Calcutta Court concurred with the Western Court in considering that a magistrate, in his magisterial character, possesses no authority to direct the search of any house for the discovery of contraband opium *as such*; but they did not think it advisable that a magistrate should be restricted from searching houses for the discovery of opium, or any other deleterious drug, which from information before him he may have reason to believe has been used as an instrument of death; and of which he considers it essential to the ends of justice that a discovery should be effected.

Western Court, 16th August, 1839.
Calcutta Court, 20th September, 1839.

From the Officiating Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 16th August, 1839.

No. 1242.
Regarding the power of officers in charge of the judge's office, to grant leave of absence to the vakeels and amlah.

An instance having occurred in which a principal sudder ameen, in charge of the current duties of a judge's office, considered himself not authorized to grant leave of temporary absence on the application of a vakeel, I am directed to request that you will obtain the opinion of the Calcutta Court on the question.

2. This Court observe that circular orders No. 161, dated 6th February, 1835, contain rules for defining the duties of functionaries in charge of the office of a civil judge, and they are aware that the power of granting leave of absence to vakeels or other officers attached to the court is not expressly included therein.

3. The Court are, however, clearly of opinion that the power should be possessed by officers in charge of current duties, of giving leave of absence for a limited term to the vakeels of the court, and generally to the amlah of the judge's establishment. Such an arrangement would conduce to convenience, and no objection to it occurs to the Court, provided the exercise of the authority alluded to be restricted (which this Court would propose it should be) to cases of emergency, not admitting of delay.

The Calcutta Court, on the 20th September, 1839, *concurred.*

No. 1243.
1819.
Reg. VIII Secs. 9 and 18, and Sec. 17, Cl. 5.

The following question arose out of a reference made by the judge of Beerbhoom.

The holder of a putnee tenure having defaulted, his tenure was brought to sale; the defaulter himself became the purchaser in a fictitious name, in opposition to the pro-

visions of Section 9, Regulation VIII. 1819, and ousted the durputneedar. In such case what remedy has the latter? Can he sue for recovery of possession of his tenure, or is he restricted to the remedies pointed out in Section 13, and Clause 5, Section 17, of the abovementioned regulation?

It was decided by the Government, in concurrence with the Calcutta Court, that as the actual defaulter is prohibited from purchasing the putneé tenure, a fictitious purchase, contrary to the law, cannot confer upon him the right of cancelling the under tenures; and that consequently the holder of any such tenure, in the event of the power of cancelling having been exercised, has his remedy in an action for recovery of possession against the fictitious purchaser, laying his suit at the value at which he estimates his interest in the property.

Calcutta Court, 16th August, 1839.

Letter of Secretary to Government, Jud. Dept., 25th February, 1840.

From the Judge of Mynpooree to the Officiating Register to the Sudder Dewanny Adawlut, Western Provinces, dated 22d August, 1839.

No. 1244.

Circular Order, July 12, 1839.

I have the honor to acknowledge the receipt of your circular letter No. 1351, under date 12th ultimo, on the subject of security of costs demanded from appellants, and with reference to the 2nd paragraph thereof, I beg to observe that as, under the construction communicated in the register's letter of the 12th June, 1835, in reply to Mr. Monckton's letter of the 2d April preceding, no security of costs is demandable from individuals appealing from the decisions of *moonsiffs*; and as in consequence of there being no sudder ameen in this district, none but appeals from the moonsiffs' orders can possibly be referred to the principal sudder ameen for decision, I conclude that the rule of practice now communicated is not intended to have immediate operation in this district.

2. To avoid any misapprehension on the part of the principal sudder ameen, I shall delay the communication of the present orders to him, until I am favored with a reply to this letter. The delay is immaterial, as, at present, I dispose of all appeals from the moonsiffs, myself.

3. I beg further to be certified as to the precise meaning to be attached to the words "after the expiration of one month" in the 1st paragraph of your letter of the 12th ultimo; that is, from what date the period of one month is to be calculated. I conclude from the date of the decree. I infer also that if the order for summoning the respondent should be passed, *before* the period of one month from the date of the decree have expired, although only one day may be wanting to fulfil that period, still a further indulgence of six weeks is to be allowed to the appellant for the filing of his security.

To the Judge of Zillah Mynpooree, dated 31st August, 1839.

Your letter No. 39, dated 22d instant, submitting certain questions suggested by the circular recently issued under date 12th ultimo, having been laid before the Court, I am directed to communicate to you the following reply.

2. On the point adverted to in your 1st and 2d paragraphs, I am instructed to say that you should apprise the principal sudder ameen of your district, of the order contained in the circular referred to, to serve as a rule of practice for the general guidance of his court, explaining to him, at the same time, that so long as there may be no sudder ameen in the district, the rule cannot of course come into practical operation, as far as regards the proceedings of his court.

3. With respect to the doubt expressed in paragraph 3 of your letter, the Court desire me to say that you are correct in calculating the period of one month, alluded to in the opening paragraph of the circular, from the date of the decree. They further observe that, although the circular does not expressly advert to the contingency of the order being passed *within* the period of one month, so calculated, with reference to the course which should be then followed, it is at the same time obvious that should that contingency occur, and the period remaining to the completion of the month be so brief as not to allow the appellant to furnish security prior to its expiration, you can always exercise your discretion as to making such further allowance on that score as may appear just and reasonable, the same principle being applicable in either case of the month having elapsed or the contrary.

The Presidency Court, on the 4th October, 1839, concurred.

No. 1245.
1819.
Reg. II. Sec. 30, Cl. 6 and 7.

Held on a reference from the judge of West Burdwan involving a construction of Clauses 6 and 7, Section 30, Regulation II. 1819, that should it be found that the collector has omitted to perform any act which he was required to do by law, and has either forwarded his report according to Clause 6, or passed a decision under Clause 7, as the case may be, without such defect being remedied, thereby precluding the judge who may decide, or hear in appeal, the case, from proceeding with and adjudicating it in a legal manner, the latter officer would be authorized, and it would be his duty to return the proceedings, pointing out to the revenue officer his want of conformity to the law applicable to the case, and desiring him to rectify the error or supply the omission, and on his refusal, the judge should bring his conduct to the notice of Government.

In no case, however, except those in which such a course might be found essential to enable him to proceed legally, ought the judge to follow it, as the terms of Clause 6 of the Section and Regulation in question sufficiently provide for such other occasions as may arise.

Calcutta Court, 23d August, 1839.
Western Court, 13th September, 1839.

No. 1246.
1818.
Reg. XII Sec. 5. Cl. 1.

A prisoner having been convicted and sentenced by the session judge, but the case in which he had been committed having been referred under Section 4, Regulation IX. 1831, to the Nizamut Adawlut in regard to other prisoners, issue of the warrant for execution of the sentence of the sessions court was postponed. Before the orders on the reference were

received by the session judge, the convicted prisoner made his escape from jail. Held that he was punishable by the magistrate as a convict, under Clause 1, Sec. 5, Reg. XII. 1818.

Calcutta Court, 23d August, 1839.
Western Court, 6th December, 1839.

No. 1247.
1816. Reg. XVII. Sec 8. 1837. Act XXIV. Sec. 5. Zemindars cannot be required to provide buildings for police officers.

Held on a reference from the session judge of 24-Pergunnahs, that a magistrate is not authorised to call upon a zemindar to provide a building for the residence of such police officers as may be stationed upon his estate under Section 8, Regulation XVII. 1816; and that in the event of such an order having been passed by a magistrate, the appeal lies to the session judge under Section 5, Act XXIV. 1837.

Calcutta Court, 6th September, 1839.
Western Court, 27th September, 1839.

No. 1248.
1814. Regulation XXVI. Section 15. Construction 293, 18th June, 1818.

Held on a reference from the judge of Cawnpore, that unproved claims of B against C may be considered as assets available in the execution of A's decree against B, and be sold by auction; when the auction purchaser would acquire the right of demanding payment from C, or, in the event of non-payment, of suing him for the recovery of the debt.

Held further that the same principle is applicable to proved claims in respect to which a decree has already passed, the auction purchaser possessing in this instance a right to sue out execution of decree in the same manner as the original decree-holder.

Western Court, 6th September, 1839.
Calcutta Court, 3d January, 1840.

No. 1249.
1814. Regulation XXVI. Sec. 4, Cl. 2.

Held on a reference from the judge of Behar, that the spirit of Clause 2, Section 4, Regulation XXVI. 1814, is applicable to miscellaneous cases.*

Calcutta Court, 13th September, 1839.
Western Court, 4th October, 1839.

No. 1250.
1839 Act IX.

Decided by the Government, in concurrence with the opinion of the Calcutta Court, that the provisions of Act IX. 1839, have equal reference to the respondent in an appeal, as to the defendant in an original suit.

Calcutta Court, 13th September, 1839.
Letter of Secretary to Government, Judicial Department, 16th January, 1840.

From the Officiating Register of the Western Provinces to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 20th September, 1839.

No. 1251.
A suit for the recovery of damages in

I am directed to request, that you will lay before the Calcutta Court the accompanying copy of a letter from the commissioner in Kamaon, and of a petition of plaint,

* For summary cases, see construction 216.

and that you will obtain the Court's opinion, with reference thereto, whether a suit for the recovery of damages in the civil court can be legally entertained against a party who has been already punished for abduction by the award of a criminal tribunal.

the civil court can be legally entertained against a party who has been already punished for abduction by the sentence of a criminal court.

2. This Court are disposed, on a review of the case out of which the present reference arose, to consider that as the penal imposition of fine and award of imprisonment in the criminal court were on account of the abduction of the complainant's wife, such criminal sentence does not bar the institution of a civil suit for any pecuniary losses alleged to have been sustained by the husband in consequence of the act so punished; and, should the Presidency Court concur, they will inform Mr. Lushington accordingly, and adopt the principle as a rule in future.

To the Officiating Register of the Sudder Dewanny Adawlut, North Western Provinces, from the Officiating Commissioner of Kamaon.

In reply to your letter of the 5th instant (acknowledging the receipt of mine of the 15th ultimo,) relative to a point of law in cases of seduction, I have the honor to state that the facts of the case which gave rise to that reference were as follows.

2. A sepahee of the 61st regiment, now stationed at Almora, had enticed away the wife of a bunya of this district, and the latter in consequence preferred a complaint to the junior assistant in the criminal court. After some delay and recusance on the part of the sepahee, the woman was produced in court; and the fact of her having been enticed away by the sepahee appearing to be established, the assistant proceeded to pass sentence on the prisoner, but instead of the punishment and fine, authorized by Regulation VII. of 1819, awarded damages to the husband in lieu of losses alleged to have been sustained by him. A petition having been presented to the senior assistant, complaining of this decision, the case was revised by him and a sentence of fine and imprisonment passed, viz. six months' imprisonment and 100 rupees fine, commutable to six months' further imprisonment in the event of non-payment, but the fine was made *conditional on the plaintiff failing to obtain a decree in the civil court for damages.*

3. Since my letter to the Court, the case has been appealed to me by the sepahee, and the punishment of imprisonment and fine upheld; for as far as I am able to judge, the offence of enticing and taking away a married woman is established against him.

4. It now remains for the Court to decide whether a civil action for marriage expenses can be instituted against this sepahee, who has already been punished criminally. The Kamaon rules are silent on the subject, and I have in vain searched the Regulations of Government for any rule by which to shape my opinion.

The Calcutta Court, on the 1st November, 1839, concurred.

No. 1252.

1831.
Reg VIII.
Sec 14 and 15.

Held on a reference from the judge of Jessore, that the Courts of Sudder Dewanny Adawlut are not included in the rule contained in Sections 14 and 15 of Regulation VIII.

27th Sept. } 1839.
31st Oct. }

1831, which refer exclusively to the zillah and city courts and to the courts subordinate to them.

Calcutta Court, 27th September, 1839.
Western Court, 31*st October*, 1839.

No. 1253.

It is competent to the Nizamut Adawlut to enhance the sentence of a sessions court on the appeal of a prisoner.

A petition of appeal having been presented on behalf of a prisoner sentenced by the sessions court to imprisonment for seven years, the Nizamut Adawlut called for the proceedings and after reviewing them annulled the sentence of the session judge, and sentenced the prisoner to imprisonment for fourteen years. On an application for a review of the Court's sentence, on the ground that it is opposed to the practice of the Court to enhance a sentence on the appeal of the prisoner, it was held that the enhancement of a sentence under the circumstances stated is fully within the competency of the Court.

Calcutta Court, 4th October, 1839.
Western Court, 31*st October*, 1839.

No. 1254.

1814 Reg XXVIII. Sec 12, Cl 1, and Sec. 5, Cl 1.

On an application to the Sudder Dewanny Adawlut, made on the part of a guardian of a deaf and dumb person, appointed under Regulation I. 1800, to be allowed to appeal *in formâ pauperis* on behalf of his ward by presenting his petition through an authorized agent, it was held that a petition to be allowed to appeal *in formâ pauperis* cannot be received, through an agent, from any person not being a female of the rank and description stated in clause 1, Section 5, Regulation XXVIII. 1814.

Calcutta Court, 4th October, 1839.
Western Court, 8th November, 1839.

No. 1255.

1810 Reg V Sec. 16. 1829 Act I

Held on a reference from the judge of Tirhoot, that as the power to receive security, in cases of distraint for arrears of rent, was conferred on moonsiffs under Section 16, Regulation V. 1812, in virtue of their office as commissioners for the sale of distrained property, that power necessarily ceases with the withdrawal of the commission under the operation of Act I. of 1839.

Calcutta Court, 18*th October*, 1839.
Western Court, 22*d November*, 1839.

No. 1256.

1793 Reg IX Sec. 4 1803 Reg. VII Sec. 15, Cl. 1

Decided by the Government, in concurrence with the Western Court, that if the evidence for the prosecution in a criminal trial is, in the opinion of the session judge and assessors, or law officer, clearly *insufficient* to prove the charge against the prisoner, it would be superfluous to proceed with the defence. If, on the other hand, the witnesses for

the prosecution should make any statement which, supposing it to be credited, might tend to inculpate or criminate the accused person, the trial must be completed in the ordinary way.

Western Court, 31st October, 1839.

Secretary to Government, Judicial Department, 10th March, 1840.

With the concurrence of the Western Court, the following letter dated 1st November, 1839, was written to the Additional Judge of Chittagong by order of the Calcutta Court, in reply to a reference made by that officer.

No. 1257.

Rule regarding the competency of moonsiffs to try suits for damages in respect to marriage on account of breach of contract, or in regard to slander.

In continuation of my letter No. 2340, of the 23d August last, I am directed to communicate to you the Court's opinion that suits involving indemnificatory claims to an arbitrary amount of damages, in respect to marriage, on account of breach of contract, or in regard to slander on account of loss of character, are not cognizable by moonsiffs.

2. Supposing, however, a claim to be preferred on account of a specific loss sustained by expenses actually incurred in prosecuting a marriage afterwards broken off, such claim should not be included in the prohibitory rule, but should be regarded in the light of any other claim to money or personal property, within the competency of a moonsiff to decide, under clause 2, Section 5, Regulation V. 1831.

3. The principle of the prohibitory rule, it should be observed, consists in the exclusion from the jurisdiction of a moonsiff, of all suits in which, though the claim may be defined, the amount to be awarded is arbitrary and at the discretion of the tribunal trying the suit, constituting a license which it would be inexpedient to accord to a native functionary of that grade, an objection to which a fixed and definite claim for a certain sum actually expended is not liable.

November 1st, 1839.

No. 1258.

1814 Reg. XXVIII. Sec. 2. Construction 921. 10th January 1831.

Held on a reference from the judge of Chittagong, that in a pauper suit, after the payment of vakeel's fees, as prescribed by Construction 621, page 3, vol. II. the dues of Government in respect to stamp expences have the next claim, since there is no reason why the pauper plaintiff who has gained his cause, should have any advantage in this particular over other suitors who have to pay beforehand; but, after the payment of the Government stamp dues, the principle of the abovementioned construction, that the order of satisfying claims is determinable by the circumstances of the case, is applicable to any other costs which may be incurred by Government as well as to claims of other parties.

Calcutta Court, 1st November, 1839.

Western Court, 6th December, 1839.

No. 1259.

Rule regarding the power of a moonsiff to call for the record of a case from another court.

Held on a reference from the judge of Mymensing, that a moonsiff has the power to call for the record of a case from any court, (such call being made through the judge of the district to which he is attached,) whenever any peculiar circumstances may render it necessary for him to do so: but that in general if any particular paper is required, the party who wishes to file it should obtain an attested copy in the usual manner.

Calcutta Court, 1st November, 1839.
Western Court, 6th December, 1839.

No. 1260.

1830 Reg. VII. Sec. 7, Cl. 2.

On a reference from the judge of Cuttack, it was decided by Government, in concurrence with the opinion of the Western Court, that clause 2, Section 7, Regulation VII. 1830, is applicable only to sales of estates permanently assessed.

Western Court, 1st November, 1839.
Secretary to Government, Judicial Department, 16th January, 1840.

From the Judge of West Burdwan to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 26th September, 1839.

No. 1261.

With reference to the provisions of Section 3, Act XXV. 1837, and to para. 3 of the circular orders of the Court, No. 478, dated the 23d February, 1838, I have the honor to request that I may be favored with the opinion of the Court on the following point:

2. In the event of its appearing, in the course of the investigation, either by this court, or by the principal sudder ameens, of an appeal from the decision of a moonsiff, that the matter at issue is of such a nature as to render a reference to the collector, under the provisions of Section 30, Regulation II. 1819, necessary,—is the appellate court competent to make this reference, while the suit is pending in appeal, or would it be necessary that the suit should be tried *de novo*? I have been induced to apply for instructions on this subject, from having observed that the principal sudder ameens are in the habit of remanding such suits for re-trial to the *moonsiffs*, notwithstanding that the latter have no authority to order the collector to investigate and report on them.

To the Judge of West Burdwan, dated 3d January, 1840.

In continuation of my letter No. 3031, of the 1st November last, I am directed by the Court to observe that, under the spirit of clause 3, Section 3, Regulation V. 1831, a moonsiff cannot legally receive a suit of a nature requiring a reference to the collector under Section 30, Regulation II. 1819; and therefore that a principal sudder ameen, having before him a suit of that description in appeal, should send the case to the judge under the circular of the 14th June last, recommending the annulment of the moonsiff's decision, and the return of the case to that officer on the ground that he ought to have rejected the suit in the first instance, as illegally instituted, and in order that he should now follow that course.

The Western Court, on the 6th December, 1839, *concurred.*

No. 1262.

[redacted]

Para. 10. Circular Order S. D. Adawlut, No. 91 — Western Provinces, 16th July, 1833—Lower Provinces, 1st November 1833.

On a reference from the judge of 24-Pergunnahs, it was held that a moonsiff is competent to ascertain the fact of resistance of a process of his court or other contempt, and to determine the amount of fine ~~(not exceeding 200 rupees)~~ which in his opinion ought to be levied on the offender: but that, prior to proceeding to levy such fine, he should report the case for the orders of the judge.

Western Court, 16th November, 1839.

Calcutta Court, 3rd January, 1840.

No. 1263.
1837.
Act XVII. Sec 5.

Held that the mere act of writing a letter which is forwarded by a private post does not necessarily subject the writer of it to punishment as an accessary to its conveyance.

But if A delivers a letter to B, for the purpose of his conveying it by post for hire from one place to another, and B so conveys it, A is an accessary before the fact to such conveyance within the meaning of Act XVII. 1837.

Western Court, 22d November, 1839.

Calcutta Court, 3rd January, 1840.

No. 1264.
1834.
Reg. II. Sec. 3, Cl. 1.

Held on a reference from the magistrate of Benares, that it is competent to a magistrate in cases where, under Regulation IX. of 1807, or other enactments, he may pass sentence of imprisonment for a term and fine, awarding, in default of payment of such fine, a further term of imprisonment with labor, to commute that labor to a fine, or in other words, to make that labor redeemable by payment of a fine.

Held further, that if labor be not awarded in the former division of the sentence, it ought not to be awarded in the other; but that if awarded in the former, it would be redeemable by payment of a fine in both.

Western Court, 6th December, 1839.

Calcutta Court, 3rd January, 1840.

No. 1265.
1819.
Reg. VII.
1831.
Reg. V. Sec. 18, Cl. 6.

Decided by the Government, in concurrence with the Western Court, that all cases under the provisions of Regulation VII. 1819, are referrible to the principal sudder ameen for investigation and report.

Western Court, 6th December, 1839.

Secretary to Government, Judicial Department, 10th March, 1840.

No. 1266.

Period allowed for execution of a summary decree for arrears of rent.

Held on a reference from the judge of Hooghly, that, under the exfsting law, execution of a summary decree for arrears of rent may be taken out within twelve years from the date of such decree.

Calcutta Court, 9th August, 1839.
Western Court, 6th September, 1839.

No. 1267.
1793.
Reg. IX. Sec. 47.

Held on a reference from the session judge of Chittagong, that when the evidence for the prosecution in a criminal trial is, in the opinion of the session judge and assessors or law officer, clearly *insufficient* to prove the charge against the prisoner, it is unnecessary to proceed with the defence; but that if, on the other hand, the witnesses for the prosecution make any statement which, supposing it to be credited, might tend to inculpate or criminate the accused person, the trial must be completed in the ordinary way.

Calcutta Court, 4th October,
Western Court, 31st October, } 1839.

No. 1268.
1833
Reg. XII.

Competency, in a special case, of the manager of the property of an absent party, to appoint special agents under Reg. XII. 1833.

A, before his departure on a pilgrimage to Mecca, appointed B his attorney, with general powers of management and superintendence of his property during his absence. The power of attorney executed by A further empowers B to defend all suits in the civil courts, to appoint and remove mooktears or agents, and specifically provides for the appointment of vakeels or pleaders, without any specification as regards the appointment of agents under Regulation XII. 1833. Held that a person vested with the management of the property of an absent party, under a document of the abovementioned nature, is competent to appoint special agents under Regulation XII. 1833, on behalf of his principal.

Western Court, 20th December, 1839.
Calcutta Court, 20th March, 1840.

No. 1269.
1814.
Reg. XXVI. Sec. 4.

Held that the order of a zillah judge dismissing a suit on default, or without any investigation of its merits, is open to review under the provisions of Section 4, Regulation XXVI. 1814.

Western Court, 3rd January.
Calcutta Court, 7th February.

No. 1270.
1812.
Reg. XX. Sec. 5.

Held that security bonds for the eventual payment of costs of suit, may be registered under the provisions of Section 5, Regulation XX. 1812.

Calcutta Court, 10th January.
Western Court, 28th February.

No. 1271.
Circular Order, No. 197. Lower Provinces, 13th January, and Western Provinces, 10th February, 1837.

Held on a reference from the judge of Futtehpore, that as the ameens appointed under the circular order of 13th January (Western Provinces, 10th February) 1837, are ministerial officers of the zillah courts, it is competent to a zillah judge to pass an order for the dismissal of an ameen, of his own authority, subject to the usual appeal allowed by law.

Western Court, 16th January.
Calcutta Court, 2d February.

No. 1272.
Mode of valuing ryotts' holdings in civil actions.

Held that suits instituted with a view to fix the jumma of ryotts' holdings should be laid at one year's rent.

Calcutta Court, 31st January.
Western Court, 19th June.

No. 1273.
1818.
Reg. XII. Section 2, Clause 5, and Section 3, Clause 4.

Held on a reference from the session judge of Behar, that it is not competent to the magistrate to sentence a prisoner convicted of burglary, who has been previously convicted of cattle-stealing, to the punishment prescribed in Clause 5, Section 2, Regulation XII. of 1818; but that it is imperative on the magistrate to commit him for trial to the sessions court.

Held further, that it is competent to the magistrate to sentence, under Clause 4, Section 3 of the above cited Regulation, a prisoner convicted of cattle-stealing, who has been previously convicted of the same offence.

Calcutta Court, 28th February.
Western Court, 27th March.

No. 1274.
Magistrates competent to punish the offence of using short weights, but cannot prescribe a current standard of weight.

Held on a reference from the session judge of Seharunpore, that the offence of using weights and measures short of what is recognized as the current standard of the place or district, is punishable as a fraud by the magistrate under the general regulations. The magistrate, however, cannot prescribe a current standard of weight.

Western Court, 28th February.
Calcutta Court, 27th March.

From the Register of the Western Court to the Register of the Calcutta Court, dated the 6th March 1840, *No.* 493.

No. 1275.
1831.
Reg. IX. Sec. 3.
1837.
Act XXIV. Sec. 6.
Competency of the Nizamut Adawlut to

I am directed to transmit the accompanying abstract of a case involving a question of jurisdiction raised by the session judge of Benares, and to request that you will obtain the opinion of the Calcutta Court, in respect to the competency of this Court to interfere therein under the law.

This Court hold that they possessed jurisdiction in the case.

1275.
3rd April 1840.

pass orders on incidental matters arising out of a criminal trial held by the magistrate, appealed to the session judge, and finally to the Nizamut Adawlut, notwithstanding the provisions of Section 6, Act XXIV. of 1837, declaratory of the finality of the session judge's orders in any judicial proceeding other than a criminal trial.

ABSTRACT.

Hurdewa and Mussamat Deya, Petitioners.

Mussamat Meha Koonwurree representing herself as the wedded wife of the son of Thakoor Diarám Sing, of Allyghur, (stated by the latter to be his son's concubine,) eloped with Hurdewa, who was accompanied by his sister Deya. After travelling through various parts of India, they recently reached Benares, where Mussamat Meha Koonwurree complained against her paramour, charging him with an attempt to poison her. In the course of her deposition she stated that certain ornaments, five gold mohurs and thirty-five rupees, which were found on the person of the prisoner, were her property which she had entrusted to his charge.

2. The magistrate acquitted the prisoner of the charge preferred against him, and ordered his release, awarding to the prosecutrix that portion of the ornaments which, by the prisoner's confession, was her property, and directing the delivery of the money to the prisoner in whose possession it was found.

3. Against this order the prosecutrix appealed to the session judge, who confirmed so much of the magistrate's decision as related to the charge on which the prisoner had been apprehended, but reversed that portion which had reference to the property found on the person of the prisoner,* nearly the whole of which he ordered to be delivered to the prosecutrix, on the ground that the income of the prisoner was not such as to warrant the belief that he could own so much property, whereas prosecutrix was the wife of a respectable person.

* A knife, brass cup, dhotee, and a small sum, necessary to carry the prisoner home, were awarded to him, which however he refused to receive.

4. From this decision the petitioners appealed to this Court, who called for the record of the case and required the session judge to explain on what grounds he entered upon the investigation of the ownership of the property and ordered delivery thereof to the party considered by him to be the owner, after the prisoner had been acquitted of the crime for which he was apprehended, and the magistrate had directed the delivery of the property to the party with whom it was found.

5. The session judge, with reference to Section 3, Regulation IX. of 1831, and Section 6, Act XXIV. of 1837, denied the jurisdiction of the Court.

6. In reply, the Court saw no reason to alter their opinion in respect to their competency to interfere. They observed that if the mistress had applied to the magistrate to compel the servant to give up her property, and, on that officer's refusal to interfere, the session judge had ordered the delivery in appeal, his view of the case not being open to the Court's revision might have been more correct. Here, however, the case came before the magistrate as a criminal trial, and, the accused being considered entitled to release, the magistrate very properly returned the property to the parties from whom it had been taken by the police officer, with the exception of so much as the party on whom it was found consented should be made over to the complainant. The case was not a miscellaneous one, but involved the carrying out of an order in a criminal trial, which order, directing the release of the accused, required that matters should be placed in the same position they were in prior to the interference of the police.

7. In rejoinder the session judge stated that the order of the magistrate relative to the contested property was separate and distinct from his proceeding in the criminal case, and that it came before him in appeal as a miscellaneous case, the magistrate having himself made the award of the property a separate matter.

The Calcutta Court concurred, 3d April, 1840.

No. 1276.

The civil court is not competent to require from the magistrate delivery, on civil process, of the person of a prisoner

Held on a reference from the judge of Mymensingh, that the civil courts cannot require the magistrate to deliver up, after the expiration of his term of imprisonment, a prisoner against whom a process had been taken out while yet in confinement; and that the process should issue, on the release of the prisoner, according to the established form.

Calcutta Court, 20th March.
Western Court, 24th April.

No. 1277.

1837.
Act XXV Sec. 5.

Held on a reference from the judge of Rungpore, that as suits for personal damages and rent-free lands, as well as those enumerated in Clause 2, Section 13, Regulation XXIII. 1814, even though the value of these may not exceed 300 rupees, are not within the competency of the moonsiff to try, they cannot fall under the rules of Section 5, Act XXV. 1837, and therefore on being referred to the sudder ameen are subjected to the stamp duty prescribed for his court.

Calcutta Court, 10th April.
Western Court, 24th April.

No. 1278.

1820
Reg X Schedule B. Article 7.

Held on a reference from the judge of Allahabad, that parties, objecting to the sale or transfer of property in execution of decrees, may petition the moonsiffs' courts on plain paper.

Western Court, 5th June.
Calcutta Court, 26th June.

No. 1279.

1829.
Reg X. Schedule A. Articles 4, 5, and 6

The following question arose out of a case in the Court of Sudder Dewanny Adawlut for the Western Provinces.

A, a resident of Shajehanpore, purchases of B, a shroff of the same place, a hoondee for a certain amount, payable in Calcutta, at the kootee of a Calcutta banker C, and sends it, in payment of a debt or otherwise as the case may be, to D; D presents it to C for acceptance, and, after acceptance, negotiates the hoondee to E; eventually, on presentation, the hoondee is not paid by C: E recovers the amount from the last endorser D, who returns it to A, who sues B, in the court of Shajehanpore, for the amount.

Can the hoondee be admitted as evidence, in the above suit, on plain paper? or, it having been negotiated while in Calcutta, between D and E, must the instrument be stamped, or a copy be affixed to it engrossed on a paper bearing the prescribed stamp?

Held by a majority of both Courts, that the hoondée, having been negotiated after acceptance, could not be admitted in court as a legal instrument, except on stampt paper, or with a copy on paper bearing the prescribed stamp.

Western Court, 19th June.
Calcutta Court, 14th August.

From the Register of the Western Court to the Register of the Calcutta Court, dated 26th June 1840, No. 1398.

No. 1280.

Held as a general rule that the examination of absent witnesses cannot be received on a criminal trial, and that their personal attendance is necessary.

1803. Reg. VII. Secs. 15. 17.

I am directed to transmit to you, for the purpose of being laid before the Calcutta Court, for their consideration and opinion in regard to the general question of the legal necessity of the *personal* attendance of witnesses on a criminal trial, the accompanying copy of correspondence* noted in the margin, with the following remarks.

2. The Government of the North Western Provinces, with advertence to the particular instance in point, where the officer officiating as civil surgeon is under the orders of a military commandant, and resident at a different station from that of the sessions court, and cannot without inconvenience be required personally to attend before such court, although his evidence is declared by the session judge to be absolutely necessary for the ends of justice, appear to contemplate the admissibility, in the court holding the trial, of the medical officer's deposition on oath taken before the magistrate (of the station to which he is attached,) either the questions to be answered on oath being referred by the session judge, or the particular point being stated; and the Court are desired to explain what objection exists to the adoption of this course.

3. The reply this Court would propose to make to the above query is, that a statement so obtained could not be legally regarded as admissible evidence on a trial.

See Blackstone, chap. 23 and following, Book III.

4. The law of civil jurisprudence recognizes the examination of witnesses absent under certain contingencies, on commission, and the reception of such written testimony on trial; and Section 17, Regulation VII. 1803, in providing for the course to be followed when "the attendance of any witness on the part of the prosecutor or prisoner, *whose evidence the law may not allow to be taken by commission*, cannot be obtained," or when "any witness cannot be found," appears to recognize the possibility of such a proceeding being legal on certain occasions in criminal cases likewise.

5. The instance in point, however, and similar instances, are clearly, in the opinion of the Court, of a nature making the *personal* attendance and *oral* evidence of the witness

* It has not been considered necessary to print the correspondence.

at the trial, indispensable. "In cases* of life no evidence is to be given against a prisoner but in his presence"—the only contingency in which "the information, being on the trial sworn to be truly taken (that is, to be the same as was taken without any addition or alteration,) may be given in evidence against the prisoner," being when the "witnesses are dead or not able to travel;" in other words, prevented from coming by the act of God, in which event the examinations thus taken *(on oath)* constitute the best and utmost evidence procurable. The recent Circular, No. 981, dated 27th March last, also, contemplates no other mode of supplying an equivalent to the evidence of the surgeon on trial, in the event of his "unavoidable absence," than his formal deposition taken previously on oath, and duly attested and proved, before the magistrate, and filed with the papers of the case committed for trial.

* 2 Hawkin's Cl. 46, and I vide Burn's Justice. Heading Evidence Sec. V.

6. In the above instances, moreover, *physical inability* to attend in person is supposed; and no minor ground regarding convenience is at all contemplated, such as is asserted in the present case; while the weight to be allowed to statements so obtained is expressly declared by law to be limited and contingent.

7. The Court further remark that the reception of evidence in the mode contemplated would be inconsistent with the letter of the law, which† declares that the evidence on the part of the prosecutor, the prisoner's defence, and any evidence he may have to adduce, *shall all be heard before him*, and‡ also that "in order to lead to the discovery of the truth, the parties shall be allowed to cross-examine the witnesses."

† Cl. 1, Sec. 15, Reg. VII, 1808.

‡ Cl. 2, Sec 16, same Regulation.

8. The Court will be glad to be favored with a communication of your Court's views on the question at an early date, in order that the trial before the Mynpoorie sessions court may not be postponed for a longer period than is necessary.

The Calcutta Court concurred, 7th August 1840.

No. 1281.

1817.
Reg XX. Sec 21, Cl. 2, and Sec. 33.

In concurrence with the Western Court, the following letter was written by order of the Calcutta Court, under date the 17th July 1840, in reply to a reference from the session judge of Dacca.

From the Registrr of the Calcutta Court to the Session Judge of Dacca.

I am directed by the Court, with reference to the observation in paragraph 2 of your letter No. 224, dated 28th April, that chowkeedars are to be considered in the light of zemindar's servants, to draw your attention to Clause 2, Section 21, Regulation XX. 1817.

2. As regards the general question touched upon in that letter, the Court are of opinion, that the zemindars are obliged to give, under certain prescribed penalties, the required information respecting dacoities, murders, and other crimes committed within the limits of their estates, which may come to their knowledge; and that it is not sufficient that the same information is received from the chowkeedars.

3.* The mode in which the information shall be communicated, appears to be left to the discretion of the zemindars. In general the information should be supplied in writing; but if the zemindar has any secret information to give, he may wait on the magistrate personally for the purpose; and it is optional with him to send a servant to the magistrate or to the darogah, as he may see fit.

No. 1282.
1807
Act XXV Sec 4.

Held on a reference from the judge of Mymensingh, that in a suit laid at a sum exceeding 5,000 rupees, but in which the principal sudder ameen gives a decree for a sum less than that amount, the appeal from the principal sudder ameen's decree lies to the Sudder Dewanny Adawlut.

Calcutta Court, 7th August.
Western Court, 26th August.

No. 1283.
1812
Reg V. Sec 26

Held on a reference from the judge of Mymensingh, that the provisions of Section 26, Regulation V. 1812, are not applicable to dependent talooks.

Calcutta Court, 7th August.
Western Court, 4th September.

No. 1284.
1802
Reg VII Sec. 7.

Held that the mode of proceeding laid down in Section 7, Regulation VII. 1802, is to be followed in the case of defendants ordered into confinement by the principal sudder ameen, in execution of civil process, in suits exceeding 5,000 rupees.

Western Court, 7th August.
Calcutta Court, 4th September.

No. 1285.
1839
Act IX. Sec. 1.

Held on a reference from the judge of Seharunpore, that the zillah judges cannot delegate to another authority the duty of making the enquiry contemplated by Section 1, Act IX. of 1839, in the case of parties applying to sue *in formâ pauperis.*

Western Court, 7th August.
Calcutta Court, 7th September.

No. 1286.
1799
Reg V Sec 7

Held on a reference from the judge of Rungpore that hoondees or other obligations for the payment of money, appertaining to the estates of parties dying intestate, may be realized by the civil court on falling due, and the amount kept in deposit until the expiration of the period of 12 months specified in Section 7, Regulation V. 1799. But

the interference of the civil court should be limited to the simple presentation of instruments payable at a fixed period, the failure to present which would involve a risk of loss, and to the realization of monies indisputably due thereon, and not extend any further, or include the assertion and prosecution of denied or disputed claims.

Calcutta Court, 14*th August.*
Western Court, 4*th September.*

No. 1287.

Rule regarding the party by whom the stamp, for mochulkas or recognizances for securing attendance of the defendant in petty criminal cases, is to be provided.

Held on a reference from the magistrate of Chittagong, that mochulkas or recognizances should be required from defendants in petty cases, in order to secure their attendance, as seldom as possible; but that, if it appears necessary in any particular instance to require a mochulka from the defendant, the amount of the stamp for the same must be provided by the prosecutor,—to be refunded by the defendant at the conclusion of the case, if the magistrate consider it proper to order a refund.

Calcutta Court, 23*d October.*
Western Court, 13*th November.*

No. 1288.

1837.
Act XVII. Sec. 5.

On a difference of opinion between the session judge and magistrate of Allyghur as to the meaning of the term "by post" in Section 5, Act XVII. 1837, it was held, in concurrence with the opinion of the session judge, that the mere conveyance of letters from place to place for hire or a consideration, constitutes the act made penal by the section quoted.

Western Court, 30*th October.*
Calcutta Court, 20*th November.*

No. 1289.

1839.
Act XXVI. Sec. 11.

Held that if a commissioner appointed under Act XXVI. 1839, have not subscribed the oath, required by Section 11 of that Act, *before an officer authorised to administer the same*, his proceedings are altogether illegal and invalid.

Western Court, 28*th November.*
Calcutta Court, 10*th December.*

8th Jan } 1841.
30th April }

No. 1290.

1825. Reg IV. 1828 Reg. VIII.

The following question was submitted by the session judge of Hooghly :—" A case has been before me in which the magistrate sentenced an individual to one year's imprisonment and to a fine of 50 rupees, or two months in default of payment; and further called upon the party to give security to keep the peace in the amount of 100 rupees for one year, or to be imprisoned for that period in default of furnishing it. This would extend the magistrate's jurisdiction beyond two years, and appears to me an infringement of the provisions of Regulation VIII. 1828. May I beg the favor of the Court's opinion on the point ?"

It was held that Regulation VIII. 1828, does not in any way interfere with the power vested in magistrates by Regulation IV. 1825. Under this construction a magistrate is competent to punish to the full extent of the power conveyed by the former enactments, and, in addition to such sentence, to require the prisoner to furnish security, or be imprisoned for a year in default; the whole term of imprisonment not exceeding three years, if the demand for security be not complied with.

Calcutta Court, 8th January, } 1841.
Western Court, 8th February, }

No. 1291.

A civil court is not competent to entertain an action to contest the award of a military court of requests.

A. and B. have dealings within a military cantonment, but are not residents therein. A. sues B. in the military court of requests and obtains a decree, B. demurring to the jurisdiction; the award is enforced, and B. sues in the civil court for the recovery of the sum paid under the award.

Held that a suit of the nature mentioned cannot legally be entertained by a civil court.

Western Court, 13th February, } 1841.
Calcutta Court, 19th March, }

No. 1292.

1793. Reg XVI. Sec. 2. 1803 Reg. XXI. Sec. 2.

Held that under the provisions of Section 2, Regulation XVI. 1793, principal sudder ameens are competent, with consent of parties, to refer suits to arbitration.

N. B. The question having reference only to principal sudder ameens, the reply was restricted to that class of judges.

Calcutta Court, 26th March, } 1841.
Western Court, 10th April, }

No. 1293.

1831. Reg. V. Sec. 6, Cl. 4.

The written notification prescribed by Clause 4, Section 6, Regulation V. 1831, should precede the usual notice to defendant. Claimants coming forward in obedience to such proclamations are liable to bear a proportion of costs.

Western Court, 30th April, } 1841.
Calcutta Court, 30th July, }

14th May } 1841.
22d June }

No. 1294.

1831.
Reg. V. Sec. 19, Cl. 2.

Held that the order of a zillah judge dissenting from a principal sudder ameen, as to the propriety of a review of the latter's judgment on a reference made under Clause 2, Section 19, Regulation V. 1831, is final, and not open to revision on appeal to the sudder Dewanny Adawlut.

Calcutta Court, 14*th May*, }
Western Court, 28*th May*, } 1841.

No. 1295.

Rules regarding the imposition of fines by moonsiffs on their ministerial officers.

Held that a moonsiff imposing a fine on any of his ministerial officers, cannot proceed to levy it, without previously obtaining the judge's sanction, and by analogy cannot remit it without the permission of the same authority; but that, if the orders have not been recorded and signed by the moonsiff, the fine may be remitted by him without any such reference.

Calcutta Court, 21*st May*, }
Western Court, 18*th June*, } 1841.

No. 1296.

1837.
Act XVII.
Sec. 33 and 35.

Held on a reference from the session judge of Azimghur, that Sections 33 and 35, Act XVII. 1837, are not applicable to European British subjects resident in the Mofussil, as those persons have not by any act of the legislature been made amenable to the local authorities in the administration of the penal enactments of the Government of India.

Western Court, 21*st May*, }
Calcutta Court, 18*th June*, } 1841.

No. 1297.

1833.
Reg. XII.
Sec. 2, Cl. 6.

On a reference from the judge of Jessore as to whether the provisions of Clause 6, Section 2, Regulation XII. 1833, extended to pauper suits, it was held that the rule was applicable to all suits in which private engagements exist between parties and pleaders.

Calcutta Court, 28*th May*, }
Western Court, 18*th June*, } 1841.

No. 1298.

No private engagement can absolve a landholder from the performance of such acts as by law he is bound to perform.

It was held, on the following reference from the magistrate of Tirhoot, that no private engagement between a landholder and another person can release the former from the due performance of such acts as he is bound by the regulations of Government to perform.

Para. 2. "The Court are aware that a great portion of the land in this district is leased to indigo planters, who are, with few exceptions, British born subjects. In the pottahs and kubooleats, containing the terms of these leases, there is invariably a clause inserted, to the effect that the theekadar or lessee shall be responsible for the due per-

formance of all those duties and obligations connected with the police, which by the Regulations are imposed upon the landholder. Now this engagement so far as the indigo planter is concerned is a mere mockery, inasmuch as there exists no law under which I can punish a British born subject for a breach of the Regulations referred to. The question therefore arises, whether an agreement of this sort is in any way binding upon the magistrate? whether the unauthorized substitution by the landholder of a deputy who is not amenable to particular laws, can be held to relieve the landholder from the responsibility which those laws impose upon him? It seems clear to me that it cannot, and that in such a case the magistrate must continue to look to the landholder as the responsible party. I should be glad however to have the Court's opinion upon the subject."

Calcutta Court, 28th May, }
Western Court, 22d June, } 1841.

No. 1299.

Mode of proceeding in the case of a decree founded on a collusive action, instituted with a view to evade execution of a just decree.

The judge of West Burdwan asked the opinion of the Sudder Dewanny Adawlut, in regard to the course to be pursued under the circumstances stated in the following extract from his reference.

Para. 2. "It appeared from the enquiry held by me in consequence of a petition presented to me by Dahooram Shaha, that on the 6th June 1840 he instituted a suit in the moonsiff's court at Sonamookhy against Gunness Gurrain for rupees 196-0-0, and that the latter, with a view to evade the execution of any decree that might be passed against him, got a relation of his own, named Gopal Gurrain, to file a fictitious suit against him before the moonsiff of Burjorah on the 5th of the same month, in which on the 8th idem he put in a collusive 'Iqbal dawee,' admitting the fictitious claim, and pledging the *whole* of his property in satisfaction of it, on the strength of which a decree was passed on the same day in his favour."

He was informed, that under the circumstances stated the aggrieved decree holder should be referred to a regular suit against the colluding parties, for all damages that he may have sustained by their fraudulent proceedings, pending the issue of which the whole of the property in question might be attached, and the interest of the decree holder protected.

Calcutta Court, 4th June, }
Western Court, 25th June, } 1841.

No. 1300.

Reg V. Sec. 6, Cl 4.

The enquiry to be made by the moonsiff, under the provisions of Clause 4, Section 6, Regulation V. 1831, is to be limited to the rights of claimants in the property actually sued for, and cannot extend to the entire estate of the deceased.

Calcutta Court, 18th June, }
Western Court, 9th July, } 1841.

16th July } 1841.
13th Aug. }

No. 1301.

1820 Regulation X. Schedule B, Article 8.

A., having obtained a decree, points out certain lands for sale in satisfaction thereof, the property as he alleges of the defendant. B., a claimant, however, interposes his claim, which is allowed and the sale stopped, when A. is recommended, if he has still any claim, to file a regular suit. He accordingly brings a suit to obtain the sale of certain lands in realization of his decree. The question arises—how is A. to estimate the value of his suit, according to the note on Article 8, Schedule B, Regulation X. of 1829?

It was held that as the suit in question was brought, not for possession, but to obtain leave to sell the interests of the original defendant in the estate, and to appropriate the proceeds of sale in liquidation of A.'s claim; or, in other words, as the suit was for the amount that the estate would sell for, the value should have been computed at the estimated selling price, (or the amount of plaintiff's claim under the decree, supposing the selling price to have been in excess of that claim,) according to the 4th Clause of the note on Article 8, Schedule B, Regulation X. 1829, the suit being viewed rather as for an interest in malgoozaree land, not capable of valuation under the 1st Clause of the note.

Western Court, 25th June, }
Calcutta Court, 16th July, } 1841.

No. 1302.

1834 Reg. II. Sec. 6

Held that it is not competent to a sessions judge to award stripes under Section 6, Regulation II. 1834, the law not contemplating such award by any other authority than the magistrate, the officer is directly responsible for the maintenance of the discipline of the jail.

Western Court, 2d July, }
Calcutta Court, 30th July, } 1841.

No. 1303.

1831. Reg. VIII. Sec 6.

The provisions of Section 6, Regulation VIII. 1831, are held to be applicable to the summary decrees of the judicial authorities passed prior to the enactment of that law; that is, all regular suits to contest the summary awards of the judicial authorities should have been instituted within one year of the promulgation of that regulation.

Calcutta Court, 16th July, }
Western Court, 6th August, } 1841.

No. 1304.

1831 Reg V. Sec 5. Cl. 2

Held that an *undefended* suit for an instalment below 300 rupees, on a bond for an aggregate sum above that amount, is cognizable by the moonsiff.

The same principle is applicable to an *undefended* action for an arrear of rent below 300 rupees, due on a farming engagement or lease of higher value.

Calcutta Court, 16th July, }
Western Court, 13th August, } 1841.

20th Aug
22d Oct } 1841.

No 1305.

A contravention of the rule laid down in Clause 1, Section 6, Regulation VI. 1819, by parties contrary to order plying their boats in the vicinity of a Government ferry, held to be a misdemeanor punishable by the magistrate under the general powers vested in him by the provisions of Section 19, Regulation IX. 1807.

1819
Reg VI Sec 6 Cl 1

Calcutta Court, 16th July—Western Court, 20th August, 1841.

No 1306.

A memorandum of agreement for the time of the services of a mokhtar, specifying a fixed sum as his monthly stipend in money, and guaranteeing to him his daily food, must be written on a stamp under the rule in Clause 2, Schedule A, Regulation X. 1829.

1829
Reg X Schedule A, Cl. 2.

Western Court, 20th July—Calcutta Court, 20th August, 1841.

No 1307

Held, on a reference from the session judge of Jessore, that appeals from the orders of a magistrate enforcing penalties under Clause 5, Section 10, Regulation XX. 1817, lie to the session judge, and not to the superintendent of police.

1817
Reg XX Sec 10, Cl 5

Calcutta Court, 30th July—Western Court, 20th August, 1841.

No 1308.

A. prosecutes B. in the moonsiff's court for possession of real property in virtue of a deed of sale. *After* the suit is instituted but *before* its decision, the rights and interests of B. in the said property, are sold by the collector to C. in satisfaction of a decree of court.

1814
Reg XXIII Sec 25, Cl 8

Has the moonsiff authority to receive an amended plea, including C. amongst the defendants; or can the judge give him such authority?

It was held that the application by the plaintiff to include C. as a defendant in his action, under the circumstances stated, is not of the nature of a supplemental plaint (which the moonsiff is not competent to receive) contemplated by the regulations, which provide a remedy for enabling parties to supply omissions arising from mistake, inadvertence, or other cause (Section 5, Regulation IV. 1793.) The case submitted does not embrace either the rectification of any error, or the supplying of any omission, but involves the competency or otherwise of a plaintiff to make application to the court, with a view to meet circumstances arising subsequently to the institution of the suit over which the plaintiff had no control whatever. It was ruled accordingly that the moonsiff is competent to receive an application from the plaintiff to include C. in his action, and to proceed with it accordingly.

Western Court, 28th August—Calcutta Court, 17th September, 1841.

No. 1309.

Held that the provisions of Clause 5, Section 2, Regulation XII. 1833, are applicable to pauper as well as to other cases.

1833
Reg XII Sec 2, Cl 5.

Western Court, 15th September—Calcutta Court, 22d October, 1841.

24th Sept. } 1841.
31st Dec. }

No. 1310.

1823.
Reg VI. Sec. 5, Cl. 4.

A question having been referred by the judge of Allahabad, whether it was intended by Clause 4, Section 5, Regulation VI. of 1823, to be ruled that the highest amount of penalty, including interest on the sum advanced, awardable against a contractor, is not to exceed three times the sum advanced; or whether the penalty may be to the amount of three times the sum advanced, and of any interest that may have accrued upon that sum, at the time of the suit being decided? It was held that the meaning of the enactment is that interest is included in the "three times the sum advanced."

Western Court, 24th September—Calcutta Court, 22d October, 1841.

No. 1311.

The civil courts cannot interfere with the estate of a lunatic, consisting only of personal property.

The estate of a lunatic consisting exclusively of personal property, there is no law which authorizes the intervention of the civil courts.

Western Court, 15th October—Calcutta Court, 5th November, 1841.

No. 1312.

1812.
Reg. V. Sec. 7—10.
1822.
Reg. XI. Sec. 32 and 33.
1840.
Act IV. Sec. 4.

The magistrate of Nuddea was of opinion, with reference to Sections 7—10, Regulation V. 1812, and Sections 32 and 33, Regulation XI. 1822, that the auction purchaser of an estate could not cancel putnee talooks, created by the former proprietor, by merely attaching them, without having previously established his right to do so in a court of justice; and adverting to Act. IV. 1840, he saw no resource but to refer the auction purchaser to the "usual legal mode of obtaining possession."

Held that where, in a suit instituted under Act IV. 1840, an auction purchaser of an estate pleads that he is exercising his legal right, it will be the duty of the magistrate, under Section 10 of that enactment, to satisfy himself whether the contested tenure is of that description which is protected by law; and that, in cases in which the tenure is not of that description, the purchaser is not obliged to apply to any court for the enforcement of his rights.

Calcutta Court, 22d October—Western Court, 26th November, 1841.

No. 1313.

1814.
Reg. XXVIII.
Case of a plaintiff having instituted his action originally on stampt paper, but pleading pauperism when required to file a supplementary plaint to amend his original plaint.

A. sues B., having paid the stamp duty and his wukeel's fees. Pending the trial, B. takes out execution of a decree, and sells A.'s landed property. After decision of the suit, A. appeals to the Sudder Dewanny Adawlut, and the case is remanded for retrial to amend the plaint, (in consequence of which amendment a higher stamp would be required and the amount of wukeel's fees, &c. considerably enhanced.) A.'s property having been sold in satisfaction of the defendant's decree, A. pleads that he is a pauper, and, therefore, unable to pay for the additional stamp required to fulfil the orders of the court. The principal sudder ameen, holding that a party cannot be admitted a pauper in the middle of the suit, not having been one at the commencement, strikes the case off the file on default. A summary appeal is preferred to the Sudder Dewanny Adawlut, and the question is, whether A. should have been allowed to carry on his suit as a pauper, after due inquiry made on that point, or should have been nonsuited and allowed to institute a suit *de novo* for the whole claim?

3d Dec 1841.
11th Feb. 1842.

It was held that, when a plaintiff, on the plea of pauperism, urges his inability to comply with the permission of the court to file an amended plaint, his pauperism should be inquired into, and, if established, his prayer granted; and that, supposing the suit to be pending before the principal sudder ameen or sudder ameen, and plaintiff to plead inability to give the amended plaint, the court before which the suit is should allow him time to present a petition to the judge, setting forth his pauperism, with a schedule of his property, when the judge would refer it to the principal sudder ameen, or investigate it himself.

Western Court, 3*d December*—*Calcutta Court*, 31*st December*, 1841.

The following questions having been submitted to the Court :

No. 1314.
1839.
Act IX.

"Under the provisions of Act IX. 1839, and Construction 1250, can a defendant (not being a pauper) appeal on plain paper against a decision passed in favor of a pauper plaintiff by the lower court ?

"Also, is such defendant to be allowed to take a copy of the lower court's decree on plain paper, for the purpose of presenting it with his petition of appeal ?"

It was held :

1st. That a decision passed in favor of a pauper plaintiff by the lower court cannot be appealed against by the defendant (not a pauper) on plain paper.

2d. That the appealing defendant may be allowed a copy of the lower court's decree on plain paper, for presentation with his petition of appeal.

Calcutta Court, 10*th December*, 1841—*Western Court*, 10*th January* 1842.

No. 1315.
1841.
Act XXIX. Sec. I.

In cases in which the petition of appeal is filed in the Sudder Dewanny Adawlut, the date of institution of the appeal must of course be calculated from the day of filing the petition. In cases however in which the petition of appeal is presented to the court of original jurisdiction, the date of institution must be calculated under Section 3, Regulation XII. 1797, from the date of the filing of the petition of appeal in the Sudder Court, that is, from the date of the petition reaching the Court. From the date of institution in either case, as above stated, the appellant must, under the provisions of Section 1, Act XXIX. 1841, proceed within six weeks. The question arises what is "*proceeding with a case* ?"

Ruled that the appellant must be held to have defaulted, and be liable to dismissal of his appeal, unless he appear in person or by vakeel, and file his reasons of appeal within the term (6 weeks) allowed, and that the mere appointment of a vakeel would not suffice to bar the liability referred to.

Calcutta Court, 31*st December*, 1841—*Western Court*, 7*th January*, 1842.

No. 1316.
1841
Act XX.

The following questions having been submitted by the judge of Delhi :

1st. Whether the petition for a certificate under Act XX. of 1841, should be on stampt paper, and of what value ?

2d. Whether the petition for a certificate may be written either in the English or Urdu language?

3d. Whether the certificate should be issued on stampt paper?

It was held:

1st. That under Section 2 of the Act, petitions for certificates are required to be presented to the judge of the zillah or district court, and ought consequently to be engrossed on a stamp of the value prescribed in the 7th Article of Schedule B., Regulation X. 1829.

2d. That the petition should be couched in the official language prescribed by the legislature, that is, the vernacular, that objectors, who in the majority of cases will be those who are best acquainted with that language, may know the nature of the appellant's claim in order to answer it. Parties however, may, if they please, accompany such petition with an English translation.

3d. That neither in Act XX. 1841, nor in any other law is it provided directly or constructively that certificates of representation shall be written on stampt, they should therefore be granted on plain, paper.

Western Court, 14th January—Calcutta Court, 11th February, 1842.

No. 1317.

1793 Reg IV Sec. 6 1803. Reg. III. Sec 6.

On a reference from the judge of Ghazeepoor, as to the proper course to be pursued in the event of a defendant absenting himself, after having filed an answer to a plaint in an original suit.

It was held that under the rule of Section 6, Regulation IV. 1793, and Section 6, Regulation III. 1803, the proper course would be to affix in the court-house a notice of 8 days as therein directed, and, in the event of the defendant not appearing within that time, to decide the case ex-parte.

Western Court, 18th January—Calcutta Court, 11th February, 1842.

No. 1318.

1841 Act XXXI.

Held that all criminal appeals pending at the date of the promulgation of Act XXXI. 1841, must be disposed of with reference to the provisions of that Act.

Western Court, 28th January—Calcutta Court, 11th February, 1842.

No. 1319.

1841. Act XIX. Sec. 3.

Held with reference to the provisions of Section 3, Act XIX. 1841, that the complainant must appear in person to make the solemn declaration thereby required; and that such declaration cannot be made through an authorised agent.

Calcutta Court, 11th February—Western Court, 4th March, 1842.

No. 1320.

1793. Reg. XVI Sec. 2. 1803 Reg. XXI. Sec 2.

Held that under the provisions of Section 2, Regulation XVI. 1793, sudder ameens and moonsiffs are competent, with consent of parties, to refer suits to arbitration.

Calcutta Court, 11th February—Western Court, 4th March, 1842.

G. H. Huttmann, Bengal Military Orphan Press.

1321—1325.

No. 1321.

On a reference from the judge of Moradabad. whether Act XXIX. of 1841, is to be considered as superseding the rule of procedure laid down for moonsiffs, in cases of default of plaintiffs, in Clause 1, Section 27, Regulation XXIII. of 1814, and whether it is therefore incumbent on moonsiffs to wait until the expiration of six weeks before dismissing suits for default:

1814. Reg. XXIII. Sec. 27. Cl 1.

1841 Act XXIX.

It was held that Act XXIX. of 1841, does not repeal any clause or regulation allowing a moonsiff to dismiss a cause after a prescribed and notified time, on default of plaintiff, within the period of six weeks, but only provides for the disposal of suits by dismissal, which, under the rule heretofore in force, have been wont to remain longer than that term.

Western Court, 18*th February*; *Calcutta Court*, 8*th April*, 1842.

No. 1322.

Held, on a reference from the session judge of Azimgurh, that the words "sentence or order" in Act XXXI. 1841, do not refer to interlocutory orders in cases under trial, and that the provisions of the Act do not preclude the interference of the higher, with such intermediate orders of the lower courts.

Western Court, 18*th March*; *Calcutta Court* 1*st April*, 1842.

No. 1323.

Rule of calculating the period of appeal from orders of moonsiffs in miscellaneous cases.

Held, on a reference from the judge of Allahabad, that the period allowed for appealing from the orders of moonsiffs in miscellaneous cases, (copies of which orders are to be granted on plain paper,) should be calculated from the date of the order appealed from, deducting the interval that may elapse between the date of the copy being applied for, and its being ready for delivery.

N. B. The moonsiffs should always note on the copy the date of application for the copy, and that of its being ready for delivery.

Western Court, 20*th March*; *Calcutta Court*, 8*th April*, 1842.

No. 1324.

1817. Reg. XVII. Sec. 8. Cl. 5.

Held, on a reference from the session judge of Agra, that the provisions of clause 5, section 8, Regulation XVII. 1817, are not applicable to cases of "administering intoxicating drugs, and theft."

Western Court, 21*st March*; *Calcutta Court*, 8*th April*, 1842.

No. 1325.

1835 Act XI.

On a reference from the session judge of Behar, whether it is imperative upon a magistrate under the provisions of Act XI. of 1835, to sentence any person convicted of a breach of that law, to imprisonment in addition to fine? and whether, in the event of a

1326—1329. fine imposed under the above Act not being paid, the party mulcted is to be imprisoned for a further term in lieu of the fine, and for what period?

A reply to the affirmative was given to the first question, and in answer to the second the session judge was referred to Act II. of 1839.

Calcutta Court, 11th February; Western Court, 11th March, 1842.

No. 1326. Held, on a reference from the session judge of Moradabad, that all appeals from a joint magistrate, of whatever powers, are appealable, under Act XXXI. of 1841, exclusively to the session judge, and that Construction 658 is consequently no longer in force.

Western Court, 12th February; Calcutta Court, 26th March, 1842.

No. 1327.
1841 Act XXIX. Sec. 2.

The judge of Moradabad having enquired, whether, with reference to the comprehensiveness of the wording of the provision contained in Section 2, Act XXIX. 1841, viz. "*in all cases in which a suit or appeal is dismissed*," *costs are required to be awarded* to respondents who shall have made answer and appointed a vakeel, without having been first summoned to defend an appeal, when such appeal may be dismissed under the Act in question:

It was held, that the contingency of the opposite party appearing without being summoned did not appear to be comprehended in the rule adverted to by the judge, inasmuch as till the said party be called on to "respond," he cannot in the strict meaning of the word be termed a "respondent." The judge was further referred to Construction 675, in which the designation is accordingly restricted to "opposite party."

Western Court, 18th February; Calcutta Court, 4th March, 1842.

No. 1328.
1814 Reg. XXV. Sec 15
1816 Reg XVII Sec 7. Cl. 8.

Held, on a reference from the session judge of Patna, that in cases before the session court as trials, the session judge is competent, under Section 15, Regulation XXV. 1814, and Clause 8, Section 7, Regulation XVII. 1816, to order the dismissal of police officers convicted of any offence, which may appear to require their removal from public office.

Calcutta Court, 1st March; Western Court, 15th April, 1842.

1819. Reg. VII. Sec. 5 & 6.

* The following queries were submitted by the magistrate of the 24-Pergunnahs, to which the replies in juxta-position were given.

Questions.	Answers.
1. Can workmen, such as mistrees, moochees, or other artisans, be brought within the meaning of the enact-	1. There must be a stipulated term of service, or

ment quoted, supposing that they have taken advances from their employers and agreed to work for the same, without any stipulation as to the precise term or specification of the job that they are to perform?

2. By what magistrate are cases, under the above mentioned provisions, cognisable: the magistrate of the district wherein the agreement was entered into, or the work was to be performed, or that of the district wherein the delinquents reside, or to which they may decamp?

a contract for the performance of a specific work to render Section 5, Regulation VII. of 1819, applicable to the cases alluded to.

2. Such cases may be prosecuted either in the district in which the agreement was executed, or in that in which the defendant resides.

1330—1332.

Calcutta Court, 18th March; Western Court, 27th May, 1842.

The following questions, relative to the law of appeal, in criminal cases, under Act XXXI. of 1841, referred by the session judge of Tirhoot, were both answered in the negative.

No. 1330. 1841. Act XXXI.

1. Supposing a party to appeal, the amount of whose punishment clearly gives him that right, can the session judge interfere with another sentence in the same case, which falls within the limitations prescribed by Sections 8 and 9, Regulation IX. 1793?

2. Supposing the party having an undoubted right to appeal, to fail or neglect to do so, can another party, in the same case, whose punishment falls within the limitations specified, be permitted to appeal?

Calcutta Court, 26th March; Western Court, 20th May, 1842.

The judge of Dacca having directed the return of a document written on plain paper, in order to have a stamp affixed, which the revenue authorities were of opinion did not require a stamp, it was held, on a reference from the former officer, that as the law vests the revenue local authorities, and the Board of Customs, Salt and Opium, with the power of determining points of the kind mooted, a deed declared by such authority, exempt from stamp duty, must be received by the courts.

No. 1331. 1829. Reg. X.

Calcutta Court, 1st, and Western Court, 15th April, 1842.

Held, on a reference from the session judge of Sylhet, that appeals under Act XXXI. of 1841, are not admissible unless preferred within one month from the date of

No. 1332. 1841. Act XXXI.

1333—1334. sentence or order, and that in this respect the law leaves no discretion to the appellate authority.

Calcutta Court, Ist, Western Court, 28th April, 1842.

No. 1333. 1840. Act IV.

The following letter, involving a reference as to the proper construction of Act IV. of 1840, in regard to certain cases of dispossession, was addressed by the magistrate of Budaon to the session judge of Bareilly, and by him forwarded to the Nizamut Adawlut for the Western Provinces.

Sir,—I have the honor to forward, for your inspection, certain cases of dispossession under Act IV. of 1840.

All these cases, you will observe, are disputes between zemindars and kutkenadars not for the possession of defined portions of land, but for the right of management and collection of rents and estates. Having great doubts whether the Act was intended to apply to such cases, I have to request your opinion on the subject.

I also forward three cases of a like description, decided by my predecessor, in which possession has been awarded to the kutkenadars, on the ground of their previous possession, without any reference to the zemindars' plea of their rights as landholders.

It occur to me that, if these cases came under the description of those contemplated by the enactment, they should have been governed by Section 10 of the Act, and, instead of the zemindars being dispossessed, they should have been retained in the management of their estates, and the party desirous of ousting them from their undoubted privileges, referred to the court for a title to do so. As the case stands, the landholders who possess the right of attachment and ejectment, have been referred to the court for authority to exercise a power, which, in virtue of their position, they already possess. This surely could not have been the intention of the enactment, which, if I understand its meaning correctly, leaves still, as heretofore, all points involving the question whether the landholder has justly exercised his power, to be decided under the regulations, which grant him, under certain restrictions, the power of distraint and ejectment.

I have, &c.

Held, that the view taken in the above letter, in regard to the magistrate not possessing jurisdiction in cases of the nature mentioned, was correct.

Western Court, 15th April; Calcutta Court, 27th May, 1842.

No 1334. 1841. Act XXIX.

With advertence to that part of Act XXIX. of 1841, which makes the institution of a new appeal, after dismissal on default under Section 1, conditional on the party not being precluded by "lapse of time and period of appeal:" it was held, on a reference from the judge of Furruckabad, that the law being general, refers to all appeals; and that, con-

sequently, if an appellant to the zillah judge default under Act XXIX. 1841, and his case is, in accordance with its provisions struck off, his appeal is lost. 1335—1338.

Western Court, 15th April; Calcutta Court, 27th May, 1842.

Held, on a reference from the judge of Moradabad, that the provisions of Regulation XV. 1816, are applicable to native officers and soldiers of irregular corps on service in Affghanistan, that is, on foreign service. No 1335. 1816 Reg. XV.

Western Court, 28th April; Calcutta Court, 20th May, 1842.

A suit, instituted in zillah Bhaugulpore, having been transferred to zillah Purneah, under the provisions of Section 2, Act XXVII. of 1838, and by the judge of the latter district referred to his sudder ameen for trial:—it was held, on a reference from the judge of Purneah, that the appeal from the sudder ameen's decision will lie to the Purneah and not the Bhaugulpore zillah court. No. 1336. 1838. Act XXVII. Sec. 2.

Calcutta Court, 13th, and Western Court, 27th May, 1842.

The following questions were submitted by the judge of Tipperah, with reference to the Court's printed Circular Order No. 177, dated 31st December, 1841, (Western Court, 17th January, 1842,) relative to the duties and remuneration of ameens. No. 1337. Civil Circular Order, No. 177, Vol. III.

1. When the measurement of lands, in addition to other local enquiries, becomes necessary, may the court appoint a mohurrir and a nullee, or nullees, subordinate to the ameen, with allowances not exceeding those of the ameen, but in addition thereto?

2. In giving possession of lands, so extensive as to render it impossible for one ameen to complete the duty, within a moderate period, may the court appoint an assistant, or assistants, on separate allowances, not exceeding those of the ameen?

3. Has the court no power to appoint an ameen to give possession, with larger allowances than 12 annas per diem, however extensive the lands may be, and however important the duty?

The reply to the 1st and 2d questions was in the affirmative, and to the third in the negative.

Calcutta Court, 13th May; Western Court, 3d June, 1842.

On a reference from the officiating session judge of Mymensing, whether under the rule of Clause 2, Section 2, Regulation II. 1832, which prescribes that in cases of burglary and thefts, unattended with personal violence, the inquiry is optional, and rests with the injured party; such party is, notwithstanding, bound to give notice of the bur- No. 1338. 1832. Reg. II. Sec. 2. Cl. 2.

1339—1342. glary to the police: it was held, that the party suffering the injury is not bound by the law to make any report of the kind referred to, unless he should be a zumeendar, and have to report the occurrence in that capacity.

Calcutta Court, 13th May; Western Court, 10th June, 1842.

No. 1339.
1841
Act XXIX.

On a reference from the judge of Allahabad, relative to the applicability, or otherwise, of the provisions of Act XXIX. 1841, to the moonsiffs' courts in the stage of a case *prior to the filing of the answer*:—the Courts of Sudder Dewanny Adawlut were of opinion that the Act in question, must be held applicable, in supersession of Construction 758, and that no suit can be struck off on default, prior to the filing of the answer, before the expiration of six weeks.

Western Court, 18th May; Calcutta Court, 10th June, 1842.

No. 1340.
1829
Reg. X.
Sch B
Note to Art. 8.

Held, on a reference from the judge of Meerut, that in suits for fractional portions of malgoozaree estates, the valuation, according to the note at Article 8, Schedule B, Regulation X. 1829, is to be computed on a portion of the jumma of the entire estate corresponding with the fractional share sued for, and not, as has been the erroneous practice in some districts, according to the estimated selling price:—thus, for instance, if the suit be for a four anna share of an estate, assessed at 1000 rupees, and within the range of the perpetual settlement, the valuation will be 750 rupees, or three times the jumma (250 rupees) of the fractional portion.

Western Court, 18th May; Calcutta Court, 17th June, 1842.

No. 1341.
Rule regulating the course of procedure in the event of a decree holder transferring his decree to another party.

Held, on a reference from the judge of Futtehpore, that in the event of A endorsing over a decree passed in his favor to B, it is essential to the formal recognition by a civil court of such a transfer that A, the transferring party, should certify in person, or by mookhtar, appointed for that special purpose, either verbally, or by petition, his having made the transfer to B, whose name should then be inserted in place of that of the original decree-holder, in the execution of decree-process.

Western Court, 20th May; Calcutta Court, 17th June, 1842.

No. 1342.
1813.
Reg. VI.
Sec. 3.

The following letter was addressed to the judge of Nuddea, in reply to a reference from that officer:

"The Court having had before them your predecessor's letter, No. 216, of the 20th September last, direct me to observe that the award in question being dated 28th December 1840, the period of six months, within which parties are required by Section 3, Regulation VI. 1813, to apply to the courts for enforcing such awards, did not expire till the 29th June 1841. But as the 28th, the last day available to the petitioner in the

present case, was a holiday, together with the following day, the 29th, the Court held that it was allowable to him to present his application on the next first court day." 1343—1347.

In considering the question raised by the judge of Nuddea, it was recognized as a general principle, that a party under legal obligation to move a court within a given period, may be allowed to postpone such motion to a day beyond the period, supposing the last day of the latter to be a Sunday or holiday.

Calcutta Court, 18th, and Western Court, 29th March, 1842.

No. 1343.

A suit cannot be proceeded with against a defendant who has left the country, and upon whom notice of action cannot be served.

On a reference from the judge of Chittagong as to whether a suit could be carried on against a party who had proceeded to England, it was held that a case cannot be tried *exparte* when it is known that the usual notice has not, and cannot, be served on the defendant.

Calcutta Court, 20th May ; Western Court, 17th June, 1842.

No. 1344.

1840.
Act IV.

Held, that an assistant to the magistrate vested with special powers is competent to dispose of cases under Act IV. 1840.

Western Court, 20th June ; Calcutta Court, 8th July, 1842.

No. 1345.

1813.
Reg X.
Sec. 32.

Held, on a reference from the session judge of 24-Pergunnahs, that the mere keeping open of liquor shops at late hours is not within the meaning and intent of the terms "disorderly conduct," and consequently, not punishable by the magistrate under Section 32, Regulation X. 1813: but, that if any breach of the peace, or other misdemeanor occur, in consequence of such keeping open of the shops during prohibited hours, the conduct of the abkar may be considered disorderly, and himself, consequently, liable to the penalty provided for disorderly conduct.

Calcutta Court, 20th May ; Western Court, 1st July, 1842.

No. 1346.

1817
Reg. XII.
Sec. 24.
1819
Reg I.
Sec. 8.
Cl. 2.

Held, on a reference from the judge of Purneah, that the rule in Section 24, Regulation XII. 1817, which requires putwarees to produce their accounts when required by the courts of justice, is applicable to the subordinate courts. Moonsiff who may require to put the rule in force should send the putwaree with a proceeding to that effect to the zillah judge.

Calcutta Court, 24th June ; Western Court, 2d August, 1842.

No. 1347.

1840
Act IV.

Held, on a reference from the session judge of 24-Pergunnahs, that a magistrate is not authorised to attach lands, (paying revenue to Government, or under-tenures,) pending

1348—1350. the decision of a case under Act IV. of 1840, or to call on the collector to attach lands according to Regulation V. of 1827, before he has come to a decision in a case under the above Act.

Calcutta Court, 24th June ; Western Court, 2d August, 1842.

No. 1348.

1805 Reg II. Sec. 2

Rule of limitation in executing decrees passed in favour of Government.

On a reference from the additional judge of Benares, as to the right of Government to take out execution of a decree in its favor, after the expiration of 12 years from the date of judgment, it was held, that the terms of Section 2, Regulation II. 1805, which section declares claims on the part of Government to be cognisable by the courts if preferred within 60 years from the origin of the cause of action, have reference to "hearing, trying, and determining" by the courts of civil justice of all claims preferred on the part of Government, but do not extend to the case of claims already adjudged ; and that, therefore, Construction No. 136, declaring that decrees may be executed after 12 years, provided good and sufficient cause for the delay be shown, must be the rule of guidance in all cases, whether the decree be in favor of Government, or a private individual.

Western Court, 1st July ; Calcutta Court, 22d idem, 1842.

No. 1349.

Rule regarding illegal and forcible dispossession from moveable property and the magistrate's right of interference in such cases.

On a reference from the session judge of Azimgurh, as to the competency of a magistrate to interfere in a case of illegal and forcible dispossession of chattels, or other moveable property, with a view to restitution, it was ruled, that supposing the fact of illegal and forcible dispossession to have been established, the magistrate is competent to exercise interference in the case ; but, if the property should be found to have come into the possession of the party it was discovered with, without proof of any violence, or other illegal act in the acquisition, and such party detained it on the plea of some claim or lien on the property, the matter would then be one of civil, and not of criminal cognizance.

Western Court, 1st July ; Calcutta Court, 29th idem, 1842.

No. 1350.

1839. Circular Order. No. 30.

Regarding a decree-holder purchasing his debtor's property at public sale.

With reference to the printed Circular Order No. 30, dated the 18th January 1839, it was held, on reference from the judge of Midnapore, that a decree-holder purchasing his debtor's property at a public sale by the collector, for a higher sum than the amount of his decree, must deposit 15 per cent. on the whole amount of the purchase money, or the balance in full ; as should the balance above the amount of his decree not be paid, the sale falls to the ground, and the purchaser forfeits the earnest money on the sum total bid by him.

Calcutta Court, 15th July ; Western Court, 5th August, 1842.

Extract from a letter from the Judge of Backergunge, to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 11th July 1842.

1351.

No. 1351.
1793
Reg. XXXVI.

"Para. 2. A petition has been presented to this court by A, stating that—on the rejection, by the officer in charge of the registry office, of a deed of sale executed by him in favor of B, on the ground of a similar deed purporting to have been executed by him in favor of C, a third party, having been already registered by a person acting under A's mookhtyarnamah, duly attested and sworn to by witnesses,—A applied by written petition to the officer before mentioned, alleging that the deed and mookhtyarnamah were both forgeries, and requesting that such proceedings should be taken as might protect his interest from prejudice, but that this petition was rejected without any reasons assigned. Now, as the order on the petition does not state whether any and what enquiry into the validity of the mookhtyarnamah was instituted, subsequent to the date of the petition, I should think the proper course for the ends of justice would be to direct the register to institute an enquiry, if it had not been done, both as to the mookhtyarnamah and deed of sale already registered, and, if they, or at any rate if the mookhtyarnamah, appeared to be a forgery, to cause the delinquents to be proceeded against by application to the judge for commitment for forgery, or perjury, or both, as might be warranted.

"3. I cannot however discover any thing in the Regulations authorising such interference of the judge with the proceedings of the officer in charge of the office for the registry of deeds; on the contrary, he is directed to bring any irregularities to the notice of Government, and therefore, particularly as the case is a novel one, I have decided on applying for instructions.

"4. Another point apparently requires to be cleared up: on the mookhtyarnamah, or registered deed, being proved before a competent tribunal to be a forgery, it would, I conceive, be the duty of the registering officer to cancel the registry already made, and to admit the deed now tendered to registry; would the judge be competent, under these, or any other circumstances, to receive an appeal brought with a view to compel the registering officer to register or cancel the registry of a deed on his refusal to do either?"

Extract from the reply of the Calcutta Court.

"The register should register the deed brought to him for that purpose, leaving it to the courts to declare which of the two deeds of sale is the true and valid document, whenever that question may be raised in a regular suit. The register, however, must satisfy himself of the identity of the party registering the deed, if the latter appear in person, or, if by attorney, ascertain the due attestation and validity of the mookhtyarnamah."

The Western Court concurred.

Calcutta Court, 22d July; Western Court, 12th August, 1842.

1352—1354.

No. 1352.
1812.
Reg. III.
Section 9.
Clauses 3, 4 and 5.

Held, on a reference from the session judge of Azimgurh, that the requisition by the magistrate from the zumindars of villages, within a certain distance from that where an affray attended with homicide occurred, of certificates that the absconded offenders implicated in the affray, were not within the limits of their estates, was not warranted by the provisions of Clauses 3, 4 and 5, Section 9, Regulation III. 1812.

Western Court, 25th July; Calcutta Court, 19th August, 1842.

Extract from a letter from the Session Judge of Azimgurh, to the Register of the Nizamut Adawlut, North Western Provinces, dated the 2d of July, 1842.

No. 1353.
1841.
Act XXXI.

"The point which I wish determined is, what is the measure of a petty offence? that is, does every crime of every denomination which a magistrate may deem to deserve no larger penalty than that which he can inflict under Section 8, Regulation VI. 1803, thereby become a petty offence therein described or not? Two cases have induced me to refer this point. In the one A was convicted of contempt of court or resistance of process, and fined rs. 30 for his offence, which is specifically punishable by a higher penalty; does this thereby become a petty offence, and is the defendant thereby precluded from appeal? In the second case, B, a chowdry, was charged with extorting money by detaining unjustly C's cart, on pretence of being compelled to furnish conveyance for the despatch of treasure, and was fined a sum less than rs. 50. Extortion is a serious charge in itself; but in this case the magistrate deemed the case light; is this a petty offence wherein the sentence is conclusive, or not?"

Extract from the proposed reply of the Western Court.

"This Court would inform the session judge that, under the law as it exists, the magistrate must be the authority to determine the character of the offence, and the measure of punishment deemed commensurate thereto, always provided he exceed not the limitation prescribed by Sections 8 and 9, Regulation VI. 1803, and that consequently there can lie no appeal to the sessions court in either of the cases mentioned. Such an appeal would, moreover, have no result as respects the award of heavier punishment with reference to the prohibition of enhancement contained in Section 4 of the Act."

The Calcutta Court concurred.

Western Court, 25th July; Calcutta Court, 26th August, 1842.

No. 1354.
1832
Reg. II
Section 2.
Clause 2.

Held, on a reference from the session judge of Furruckabad, that though it is irregular under Clause 2, Section 2, Regulation II. 1832, for a police officer to make a local enquiry into cases of the nature therein specified without the written application thereby prescribed, it is not irregular in the magistrate to direct the police officer to make the enquiry, whenever he may consider such a step to be advisable.

Western Court, 5th August; Calcutta Court, 25th idem, 1842.

1355—1358.

No. 1355.
1829.
Reg XIV.

Held, on a reference from the judge of Futtehpore, that parties instituting and defending suits in the Company's courts, and who reside in a foreign state, but hold lands and other property within the limits of the British territories, must nevertheless find security for costs, under the provisions of Regulation XIV. of 1829.

Western Court, 5th August; Calcutta Court, 26th idem, 1842.

No. 1356.
1829
Act IX.
Section 1.

Held, by a majority of the Courts of Sudder Dewanny Adawlut, that orders passed by the zillah judges under Section 1, Act IX. of 1839, rejecting applications to sue *in formâ pauperis*, are appealable to the Sudder Dewanny Adawlut.

Calcutta Court, 22d July; Western Court, 19th August, 1842.

No. 1357.
1823.
Reg. VI.
1836.
Act X.

Held, on a reference from the session judge of Midnapore, that the decision of a principal sudder ameen, or sudder ameen, passed in a summary suit instituted under Regulation VI. of 1823, which has been referred to him for decision under Section 5, Act X. of 1836, is not appealable with reference to the rule of Section 6 of the former enactment.

Calcutta Court, 5th August; Western Court, 2nd September, 1842.

No. 1358.
1829.
Reg X.
Sch. B.
Art. 6.

The following question was put to the Sudder Dewanny Adawlut for the North Western Provinces by the judge of Cawnpore:

"I have a suit before me for possession of a Government 4 per cent. promissory note for 5000 Sicca rupees, and have some doubt whether the appeal should not have been made to the superior court."

Extract of a letter from the Register of the Sudder Dewanny Adawlut for the North Western Provinces.

"The majority of the Court do not think any legal objection exists to the judge hearing the appeal. They observe the suit is not brought for the recovery of 5000 Sicca rupees, but for a document valued at 5000 Company's rupees, and which, if now sold in the bazar, would certainly not realize the sum at which the suit is brought; it was pledged for rupees 4,600, the amount for which it is said to be redeemable is 4,930."

Reply of the Calcutta Court:

"I am directed by the Court to acknowledge the receipt of your letter No. 1557, of the 5th ultimo, and to state, in reply, that the suit in question having been brought to recover possession of a Government promissory note for rupees 5000, without mention of any currency, which amount is covered by a stamp of 150 rupees, and no objection

1359—1360. having been urged against the valuation in the court of first instance, the Court are of opinion, with the majority of the Western Court, that the appeal lies to the zillah court."

Western Court, 5th August; Calcutta Court, 2d September, 1842.

No. 1359.

1840. Act IV. Section 2. 1823. Reg VI. 1836 Act X.

The following question was submitted by the magistrate of Midnapore, through the session judge of that district.

"A, a ryot, complains against C, as likely to carry off indigo plant grown by him, and states himself to have received advances from, and to have grown the disputed plant for B, an indigo planter; C, likewise an indigo planter, declares that he has also made advances to A, and that A has cultivated plant for him too, which however A denies.

"Trying such a case under Section 2 of Act IV. of 1840, I conclude that A is the person manifestly to be considered in possession of the crop disputed, and is to be allowed to deliver the disputed plant to either B or C as he may think fit; and that an order may be given by the magistrate prohibiting C from attempting to take forcible possession: C of course will have his redress in the civil court against A or B, under Regulation VI. of 1823, and Act X. of 1836, and if he timely take his measures there, supposing his claim to be in reality a better one than that of B, he might upon giving security, on a summary enquiry, be enabled to cut and carry away the disputed plant, which seems to me to be sufficient for the protection of his rights."

The Courts of Nizamut Adawlut were of opinion that the magistrate had taken a correct view of the subject.

Calcutta Court, 5th August; Western Court, 2d September, 1842.

No. 1360.

Rule regarding the payment of deposits to vakeels.

Held, on a reference from the judge of Futtehpore, that money deposited in court as payable to a party, should never be paid to a vakeel, save under specific authority conveyed in the vakulatnamah; and that for any sums paid away in any other mode, the officers making the disbursement must be held personally responsible.

Western Court, 5th August; Calcutta Court, 9th September, 1842.

No. 1361.

1841 Act XXXI. Sec. 2.

Held, on a reference from the session judge of Cuttack, that the order of a magistrate inflicting fine, not exceeding 200 rs., under the express condition specified in Section 8, Regulation IX. 1793, is not appealable; but that it is incumbent on the magistrate, in passing an order of fine above 50 rs. under that enactment, to set forth that the person fined is in the condition mentioned; and that, in the absence of any such declaration on the part of the magistrate, any order of his directing the payment of a fine above 50 rs. is *primâ facie* appealable.

Calcutta Court, 19th August; Western Court, 9th September, 1842.

1362—1366.

On a reference from the judge of Furruckabad, whether in a suit referred to the principal sudder ameen, under Section 5, Act XXV. 1837, that officer would be bound by the rules regarding tullubana for service of process and the receipt of supplemental proceedings, applicable to the court of the moonsiff:—it was held, that the law having made a specific declaration of the particular instances, viz. as regards stamp duties, and appeal, in which principal sudder ameens, acting in such a character are to be subject to the rules prescribed for the courts of the moonsiffs, the requirement must be held to be limited to the purport of that declaration, and that consequently, in the points instanced the principal sudder ameen would not be tied down by the restrictions imposed by law on the moonsiffs' courts.

No. 1362.
1837.
Act XXV.
Sec. 5.

Western Court, 26th August; Calcutta Court, 9th September, 1842.

Held that a civil court, authorised to admit supplemental proceedings, may allow one supplemental plaint or answer to be filed on the application of the party wishing to do so, but has no authority to dictate to the parties, and order one to be filed without such application.

No. 1363.
Rule regarding supplemental proceedings.

Western Court, 24th August; Calcutta Court, 23d September, 1842.

Held, on a reference from the session judge of the 24-Pergunnahs, that putneedars are included in the terms "landholders, proprietors, and farmers of land," made use of in Clause 4, Section 10, Regulation XX. 1817, and therefore liable to be called upon to perform the duties referred to in that clause.

No. 1364.
1817.
Reg. XX
Section 10.
Clause 4.

Calcutta Court, 2d, and Western Court, 23d September, 1842.

Held that a thanadar is empowered by Sections 12 and 13, Regulation XX. of 1817, to enter upon an enquiry into a charge of rape preferred directly at the thannah—no complaint having been preferred in the first instance at the cutcheree of the magistrate.

No. 1365.
1817
Reg. XX
Secs 12 and 13.
1811.
Reg. VII.
Sec. 3.

Western Court, 19th November; Calcutta Court, 9th December, 1842.

In a dispute between a proprietor of an estate, and a mortgagee of an orchard situated therein, the magistrate of Bareilly considering the possession of the latter to have been satisfactorily established, directed him to be maintained in possession. The proprietor appealed, and the session judge reversed the decision of the magistrate, directed him to maintain the proprietor in possession, and referred the mortgagee to the civil court.

No. 1366.
1840.
Act IV.
Regarding disputes between a proprietor and a mortgagee.

1307. The Western Court considered that the course adopted by the magistrate in the case in question, for the maintenance of the mortgagee in possession, till formally dispossessed by the usual process laid down in the regulations, was right.

The Calcutta Court concurred.

Western Court, 2nd, and Calcutta Court, 23d December, 1842.

No. 1307. 1842 Act X. *From the Register of the Western Court to the Register of the Presidency Court of Sudder Dewanny Adawlut, dated 22nd December,* 1842.

I am directed to request that you will lay the accompanying copy of a letter No. 493, dated 1st instant, with its original enclosure, from the officiating commissioner of Meerut, before the Calcutta Court, for the opinion of the judges thereon.

2. On the several points, regarding which an interpretation of Act X. of 1842, is sought, this Court would answer as follows:

3. Differing from Mr. Begbie, the Court would restrict the meaning of the term "householder" used in the Act to *house-proprietor*, tenants not being included in the definition—an interpretation that seems obvious with reference to the provision, in Section 3, for the rate being raised by a per centage on the rent, or yearly value of the premises within the settlement, which could not be intended to be assessed by mere tenants of the property.

4. On the second point of enquiry the Court agree with Mr. Begbie as to the permanent character of the committee when once constituted, subject to the liability of dissolution contemplated in Section 8, and in respect to the rates being annually revisable at the discretion of the committee. In the third subject of enquiry also the Court concur with the commissioner.

5. With respect to the 4th question, the Court conceive that, under the terms of the Act, the committee in all its members would be jointly and severally responsible for any misappropriation of monies collected, to purposes foreign from those contemplated in the enactment; but they observe, that the fact, whether the act complained of, was or was not a "misapplication" of the nature described in Section 3, would be determinable on trial of the "civil action" provided by the same section.

From the officiating Commissioner of the 1st Division to the Register of the Court of Sudder Dewanny Adawlut, Western Provinces, dated 1st December, 1842.

I have the honor to lay before the Court, the accompanying letter to my address from Major Angelo, secretary to the local committee at Mussooree, proposing, for resolution, certain points of doubt entertained by the residents at that place, regarding the meaning and intent of Act X. of 1842.

2. The points discussed by Major Angelo, are four in number.

First. The meaning to be attached to the word "householder" used in the Act.

Second. Whether the application to be placed under the operation of the Act, is to be made annually, or only once, and the operation of the Act to be considered permanent when sanctioned by Government. 1368.

Third. The propriety of, appointing the political agent at Dehra, and the resident magistrate, to be ex-officio members of the committee; and

Fourth. The degree of responsibility which will attach to the committee.

3. On the first point, it appears to me that the word "householder" must be understood *generally*, as comprehending both tenants and house-proprietors. I see no difference between tenants in the hills and tenants in the plains, the rents of houses being fixed by the proprietors for the season, and being generally as high or higher, than the annual rents of houses in the plains. I apprehend no injury to the proprietors of houses likely to arise from the rates being voted by the tenants; as the former always have it in their power to raise their rents; and it appears to me that the latter have an equal, if not greater, interest than the proprietors in maintaining the roads or other public works in good repair. The interests of the proprietors are moreover protected by the limit of taxation fixed by Section 3 of the Act.

4. On the second point, I conceive that when the Act shall have been once rendered operative, on the application of the householders, it must continue so permanently; and that a revision of rates should be made annually by the committee, with reference to the increase or decrease in the number of inhabited houses, and the rise or fall in rents.

5. Regarding the third point, I am of opinion that, with reference to Section 2 of the Act, the political Agent at Dehra, not "being an inhabitant of the place," could not be appointed a member of the committee. I see no reason, however, why the resident magistrate should not be nominated a member of the committee, if so desired by that body, during the time of his *actual* residence in the hills.

6. With respect to the fourth and last point of doubt, it seems to me clear enough, that the intent of Section 3 of the Act is to hold the committee responsible for any *fraudulent* misapplication of the money collected by them; and not for any mere error of judgment "in respect of any contract entered into by them *bonâfide* on behalf of the inhabitants."

The Calcutta Court concurred on the 20th January, 1843.

On a reference from the judge of Cawnpore, it was held, in adoption of the rule of Circular Order of the Sudder Dewanny Adawlut, No. 25, dated 7th January 1831, that the interval of the established vacations must not be allowed to be deducted, in the calculation of the period beyond which default is incurred under Act XXIX. of 1841. No. 1368. 1841. Act XXIX.

Western Court, 2nd, and Calcutta Court, 23rd December, 1842.

1369—1373.

No. 1369.

1825. Regulation IX. Section 3.
1822. Regulation VII. Sections 11, 12, 14 and 16 to 35.
1833. Regulation IX.

Held, on a reference from the judge of Ghazeepoor, that the Government are, by Section 3, Regulation IX. 1825, competent to authorise the revenue authorities, though not employed in revising settlements, to perform all the acts described in Sections 11, 12, 14, and 16 to 35, of Regulation VII. of 1822, in any specified tract within the provinces of Bengal, Behar, Orissa, and Benares, in the summary adjudication of suits between individuals; that the provisions of Regulation IX. 1833, are applicable to adjudications in such parts, made in conformity with those provisions; and that, therefore, the collector is competent to adjudge claims connected with disputed boundaries in those tracts.

Western Court, 27th January, and Calcutta Court, 10th February, 1843.

No. 1370.

1836. Act XXVI.
1841. Act XXXI.

Held, on a reference from the session judge of Delhie, that an appeal from the decisions and orders of a superintendent of police in the Governor General's camp, appointed under Act XXVI. of 1836, is cognisable by a session judge, in the same manner and under the same restrictions as appeals from the decisions and orders of a magistrate or other officer empowered to try criminal cases, are admissible.

Western Court, 17th, and Calcutta Court, 31st March, 1843.

No. 1371.

1833. Regulation IX.

Held, on a reference from the officiating judge of Jounpore, that the jurisdiction of the civil courts is only barred by the provisions of Regulation IX. of 1833, when the proceedings of the collector, or other officer, engaged in making settlements, are in conformity with the rules prescribed in the enactment; and that when a suit, brought to set aside the decisions passed and adjustments made by the revenue authorities, acting under the law quoted, is deemed admissible, it must be tried and decided, not with reference to the informality of the collector's proceedings, but on the merits of the plaintiff's claim.

Western Court, 7th November, 1842; *Calcutta Court, 17th March*, 1843.

No. 1372.

Circular Order No. 128, dated 2nd January 1835.

Held, on a reference from the officiating judge of Hooghly, that copies or extracts of merchants' accounts and books, to be kept with the record, must be made on stamps of the value of 8 annas per sheet.

Calcutta Court, 20th January, and Western Court, 6th February, 1843.

No. 1373.

1814. Regulation XXIII. Sec. 13, Cl. 2.

Held, on a reference from the judge of Rungpore, that the prohibition contained in Clause 2, Section 13, Regulation XXIII. of 1814, does not extend to summary suits; and that moonsiffs are competent to try the fact of possession, by a European, of land

attached by them in execution of decree, in the same manner, as they can enquire into the possession of lakhiraj land, as ruled by Constructions Nos. 798 and 1054. 1374—1375.

Calcutta Court, 27th January, and Western Court, 15th February, 1843.

Held, on a reference from the officiating judge of Chittagong, that fines, not exceeding 50 rupees, must be made commutable by imprisonment (Section 111, Regulation X. 1819,) and the orders executed by confinement of the individual for the prescribed period, unless the fine be paid in the interim, when the party is entitled to his discharge ; and that if the fine exceed 50 rupees, but be not more than 400, (Section 31, Act XXIX. 1838,) and the order contain no provision for commuting the same to imprisonment, in default of payment, then the judge must proceed to realize the fine exactly in the same manner as he would do in the execution of a decree of his own court of the same amount as the fine imposed, taking care that the term of imprisonment in no case exceeds the scale laid down in Section 110, Regulation X. 1819.. No. 1374.

Construction No. 1135, dated 2nd November, 1838.

Calcutta Court, 27th January, and Western Court, 17th February 1843.

Held, by a majority of the two Courts, that a case, without trial of the merits, being remanded for irregularity, either party being desirous of a review of that order, after the expiration of three months, must move the Court by a petition, engrossed on a stamp of the value prescribed for petitions given after the period of three months by Clause 1, Section 2, Regulation II. 1825. No. 1375.

1825. Reg. II. Sec. 2, Cl. 1. Reviews of orders of remand in regular appeals.

Western Court, 31st January ; and Calcutta Court, 24th February, 1843.

C. H. Huttmann, *Bengal Military Orphan Press.*

AN

INDEX

TO THE WHOLE

OF

THE CONSTRUCTIONS

BY THE COURTS

OF

Sudder Dewanny and Nizamut Adawlut,

OF THE

REGULATIONS AND LAWS

FOR

THE CIVIL GOVERNMENT

OF

THE TERRITORIES UNDER THE PRESIDENCY

OF

FORT WILLIAM IN BENGAL.

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1844.

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THIS work is printed in quarto, to bind with Vol. *III.* of the Constructions, or separately if desired. Together with a list of every Clause and Section that has been construed, it contains the *substance* of the whole of the Constructions, arranged under appropriate heads, with notes to indicate the state of the law at the commencement of the year 1844. It is thus adapted for a substitute for the three volumes of the Constructions, for general purposes, besides serving as a means of tracing any Construction by its subject.

Since this Index was put to press, corporal punishment, in certain cases of theft, has been legalised by Act III. 1844.

*** The Roman numerals refer to the volume, and the Arabic figures to the page in which any Construction is to be found.

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PRINCIPAL HEADS

UNDER WHICH

The Constructions are arranged in this Index.

	Page.
Abcaree,	1
Abduction,	1
Absconded offenders,	1
Account books,	1
Accomplices,	1
Administering poisonous or deleterious drugs,	2
Adultery,	3
Affrays,	3
Agents appointed under Regulation XII. 1833,	3
Ameens,	3
Appeals—	
I. To the King in Council,	4
II. Appeals from one's own decisions,	4
III. Regular appeals by whom cognizable,	4
IV. Limitation of time in appeals,	5
V. Preparation and trial of appeals,	5
VI. Regular appeals summarily decided without summoning the respondent,	6
VII. Special appeals,	6
VIII. Summary and miscellaneous appeals,	7
IX. Appeals in summary suits for rent,	9
X. Appeals in summary suits for dispossession,	9
XI. Appeals in criminal cases,	9
Arbitration,	9
Arrest,	10
Assessors,	10
Assistance, writ of,	10
Assistant to the collector,	10
Assistant to the judge,	11
Assistant to the magistrate,	11
Attachment,	11
Attorney,	13
Auction purchaser,	13
Ba furzundan,	13
Bail,	13
Bankruptcy,	14
Begars,	14
Begum Sumroo's territories,	14
Benamee purchase,	14
Benares, Rajah of,	14
Bonds,	14
Bribery,	14
Burglary,	15
Calcutta,	15
Carriage, supply of, for troops and travellers,	15
Cattle,	16
Charge of the office of judge, officer in,	16
Chinsurah,	16
Choongee,	16
Chowdrees,	16
Chowkeedaree tax,	16
Civil jails and prisoners,	17
Claims to property attached in execution of decrees,	17
Claims to property attached or sold for public arrears,	18
Claims to property in suits in moonsiffs' courts,	18
Coinage,	18
Collector,	18
Commission on the recovery of stolen property,	21
Commitments,	22
Company's investment,	23
Compromise of theft,	23
Conduct of trials,	23
Confessions,	24
Contempt,	24
Contingent charges,	25
Conviction of an offence not charged,	25
Conviction of two or more offences,	26
Copies,	26
Corporal punishment,	25
Costs in civil courts,	26
Costs in criminal courts,	26
Curator,	26
Customs,	26

Damages, ... 26
Deceased persons, debt of, ... 27
Deceased persons, succession to the estates of, ... 27
Decisions summarily confirmed, ... 27
Deposit of money in court, ... 28
Dismissal on default, ... 28
Dispossession or disputed possession, summary process of the civil courts in cases of, ... 29
Dispossession or disputed possession, summary process of the criminal courts in cases of, ... 30
Distraint, ... 32
Dukhilnameh, ... 33
Dwelling houses, ... 33

Embankment, ... 33
Embezzlement, ... 33
English language, ... 33
Escape of convicts, ... 33
European British subjects in civil matters, ... 34
European British subjects in criminal matters, ... 35
European public officers, ... 36
Evasion of process, ... 36
Exclusion from public employ, ... 36
Execution of decrees—
I. Limitation of time for execution, ... 36
II. What may and what may not be sold in execution of decrees, ... 37
III. Execution stayed on security, ... 37
IV. Sale of land or other property in execution, ... 38
V. Payment of purchase money and distribution of assets, ... 38
VI. Confinement of debtors in execution of decrees, ... 39
VII. Objections to execution of decrees, and appeals from orders regarding sales, 40
VIII. Power and duty of collectors in execution of decrees, ... 41
IX. Power and duty of native judges in execution of decrees, ... 41
X. Interest and mesne profits, ... 41
XI. Miscellaneous subjects, ... 41
Execution of sentences of military courts, ... 41
Exemption from labor, ... 41

Ferries, ... 42
Fines, ... 42
Foreign territories, crimes committed in, ... 43
Forfeiture of land, and fines for resistance or evasion of process, ... 44
Forgery, ... 44
Fraud, ... 45
Furruckabad, Nuwab of, ... 45
Futwa, ... 45

Gambling, ... 45
Gang robbery, ... 45
General warrants, ... 45
Ghaut manjees, ... 45
Godena, ... 45
Gomashtah, ... 46
Government and its officers, suits against, ... 46
Guardians and minors, ... 46

Hats, ... 47
Hindu law, ... 47

Illegitimate children, ... 47
Inadequacy of price, ... 48
Incest, ... 48
Indigo, ... 48
Insane, ... 49
Insolvent debtors, ... 49
Instruments of husbandry, ... 50
Interest, ... 50
Intestates, ... 50
Irregularity or illegality of decisions, ... 51

Jails, criminal, ... 51
Joint magistrate, ... 51
Jotedar, ... 52
Jurreemana, ... 52
Jurisdiction of criminal courts, ... 52
Justice of the peace, ... 53

Kazee, ... 53
Kistbundee, ... 53
Kuboolyuts, ... 53

Labor, ... 53
Law officers, ... 53
Leases, ... 54
Leper, ... 54
Limitation of time, ... 54
Litigious suits and appeals, ... 54
Local enquiries, ... 55

Magistrates' orders, appeals from, and revision of, ... 55
Magistrates, powers of, ... 58
Mahomedan law, ... 60
Maintenance of wives and children, ... 60
Malicious charges, ... 60
Manager of the estate of an absentee, ... 61
Marriage, ... 61
Military cantonments, courts, &c., civil, ... 61
Military cantonments, courts, &c., criminal, ... 62
Military force, ... 62
Military stores, ... 62
Minutes by the Judges of Sudder Dewanny and Nizamut Adawlut, ... 62
Miscellaneous cases, civil, ... 62
Miscellaneous cases, criminal, ... 62
Mitigation of sentence, ... 63
Mocurreree, ... 63

Mokhtars and mokhtarnamehs, ... 63
Moochulka or recognizance to keep the peace, ... 63
Moochulka or recognizance to secure attendance in criminal courts, ... 64
Moonsiffs—
I. Appointment, removal, &c., of moonsiffs, 64
II. Powers and duties of moonsiffs, ... 65
III. Process and practice in the courts of moonsiffs, ... 66
IV. Appeals from decisions of moonsiffs, .. 68
V. Execution of decrees of moonsiffs, ... 68
VI. Miscellaneous matters concerning moonsiffs, ... 69
Mortgage, ... 69

Native officers, ... 71
Nazirs, ... 73
Neglect of duty, ... 73
Nizamut Adawlut, ... 74
Nonsuit, ... 75
Notice, ... 76
Nuwab Nazim, ... 76

Oath—
I. Administered by a collector, ... 76
II. Administered by an officer commanding, 76
III. Of an assistant to a magistrate, ... 76
IV. Of commissioners under Act XXVI. 1830, ... 76
Opium 76
Original suits—
I. What are to be heard as regular suits, ... 76
II. By whom and against whom original suits may be instituted, ... 77
III. Original suits in what district to be instituted, ... 78
IV. Original suits in what courts cognisable, ... 79
V. Amount of action in original suits, ... 79
VI. Limitation of action in original suits, ... 79

Parentage, ... 80
Paupers, ... 81
Penalty—
I. For breach of opium laws, ... 82
II. For breach of salt laws, ... 82
III. For non-delivery of articles of Company's investment, ... 82
IV. On arrears of rent, ... 82
V. On undue execution of rent, ... 82
Pensions, ... 83
Peons, ... 83
Perjury, ... 83
Pleaders in civil courts, ... 84
Pleaders in criminal courts, ... 86
Police officers, ... 86
Post office, ... 87

Postponed trials, ... 88
Pottahs, ... 88
Practice, ... 88
Principal sudder ameens, ... 89
Printing presses, ... 91
Proclamations, ... 91
Proclaimed offenders, ... 91
Provincial courts, ... 91
Public health and convenience, ... 92
Public officers complained against, ... 92
Public prosecutor, ... 93
Punchayut, ... 93
Putnee tenures, ... 93

Rape, ... 94
Razeenamah in civil cases, ... 94
Records, ... 95
References of criminal cases to law officers and sudder ameens, ... 95
References to the Sudder Dewanny Adawlut in miscellaneous cases, ... 95
Refusal to grant pottahs or receipts, ... 96
Register of deeds, ... 96
Register of zillah and city courts, ... 97
Regulations, errors in, ... 97
Regulations, receipt of, ... 97
Release of convicts, ... 97
Rent-free lands, ... 98
Rent, suits for, on ½ stamp, ... 100
Rent, summary suits and processes for, ... 100
Repair of roads, ... 103
Resistance of process, ... 103
Re-trial, suits sent back for, ... 103
Review of judgment, ... 104
Rewards, ... 105
Ryots, ... 106

Salt, ... 106
Second suit, institution of, ... 107
Security for debt, ... 107
Security for good conduct, ... 107
Security of defendants, ... 108
Sessions judges, ... 109
Slavery, ... 110
Snatching, ... 110
Sodomy, ... 110
Special commission, ... 110
Stamps—
I. Documents on improper stamps or plain paper, ... 111
II. Stamps for private deeds, ... 112
III. Stamps in lieu of institution fees for petitions of plaint and appeal, ... 113
IV. Stamps for pleadings, ... 115
V. Stamps for exhibits and list of witnesses, 115
VI. Stamps for petitions and applications, ... 116
VII. Stamps for bail and security bonds, ... 116

Stamps—
VIII. Stamps for copies, ... 116
IX. Stamp venders, ... 117
Stolen property,... 117
Succession to the estates of deceased persons,..... 118
Sudder ameens,..... 118
Sudder Dewanny Adawlut, ... 119
Suicide,..... 119
Superintendent of police,..... 120
Supplementary plaint or pleading, ... 120
Suttee, ... 121

Theft, ... 121
Thuggee, ... 122

Tusheer, ... 122

Unsigned roobucarees, ... 122

Village accounts, ... 122

Warrants, ... 123
Weights, ... 123
Witnesses, ... 123
Workmen, ... 124
Wuqf, ... 125

Zillah and city courts, ... 125
Zumeendars, ... 126

INDEX

TO THE

BOOK OF CONSTRUCTIONS.

ABCAREE. *Page*

1. The judge may levy the prescribed penalty from any one, amenable to his jurisdiction, who sells Bengal rum without a licence. No. 32, 1st August 1807, ... I. 8

2. Police darogahs are equally entitled with other persons to half the penalty leviable from persons convicted of manufacturing and selling spirituous liquors without a licence. No. 43, 10th November 1808, I. 11

3. The mere keeping liquor shops open at late hours is not "disorderly conduct" within the meaning of Section 32, Regulation X. 1813, punishable by the magistrate, unless breach of the peace or other misdemeanor occur in consequence of such keeping open. No. 1345, C. C., 20th May, W. C., 1st July, 1842,..... III. 92

ABDUCTION.

1. A suit for the recovery of damages in a civil court can be legally sustained against a party who has already been punished for abduction by a sentence of a criminal court. No. 1251, W. C., 29th September, C. C., 1st November 1839,..... III. 64

ABSCONDED OFFENDERS.

1. A requisition by a magistrate from the zumeendars of certain villages within a certain distance from that in which an affray with homicide had occurred, of certificates that the absconded offenders were not within the limits of their estate, is not warranted by the provisions of Clauses 3, 4, 5, Section 9, Regulation III. 1812. No. 1352, W. C., 25th July, C. C., 19th August 1842,..... III. 95

ABSENTEE.

See "Manager of the Estate of an Absentee."

ACCOUNT BOOKS. *Page*

1. A person refusing to produce *muhajon's* books, when required to do so by a civil court, may be proceeded against as a witness refusing to give evidence. No. 270, 26th March 1817,..... I. 96

2. Account books [Bhye Khatas] need not be stamped. No. 275, 2d July 1817, ... I. 99

3. When an entry of a sum advanced to an individual has been made in a separate leaf of a merchant's book, in the form of a bond bearing interest, and regularly signed by the debtor, and attested, if the leaf have no stamp the writing must be treated as a bond on unstamped paper, and rejected *in toto*. No. 325, 18th August 1820, ... I. 133

4. No regulation requiring that account books shall be written on stampt paper, they are admissible as evidence though written on plain paper. No. 592, 6th May 1831, ... I. 247

5. Though no specific regulation exists on the subject, it has been the established custom to call on muhajons to produce their books as evidence in suits pending in the courts. No. 757, W. C. 8th February, C. C. 8th March 1833,..... II. 82

6. When a party signs a muhajon's account in the *Bhye Khata* as security for the debtor's discharge of the creditor's claim, the leaf of the account book, to make the security available, must be stamped. If this be not done, the claimant may adduce other evidence of the security having been given. No. 970, C. C. 7th August, W. C. 4th September, 1835, ... II. 223

ACCOMPLICES.

*1. A person concerned in house breaking or dacoity, giving information to a magistrate, through a police officer, which may lead to the apprehension and conviction of the principal receiver of stolen property, is entitled to the benefit of the pardon allowed

by the provisions of Clauses 1 and 2, Section 9, Regulation I. 1811. (See Regulation X. 1824, as modified by Regulation I. 1829.) No. 89, 11th July 1811, ... I. 21

2. The Nizamut Adawlut declined sanctioning the offer of pardon without having before them the information required by Clause 2, Section 5, Regulation XIV. 1810, respecting the privity or other criminality of the person proposed to be pardoned. (See Regulation X. 1824, as modified by Regulation I. 1829.) No. 152, 7th April 1811, ... I. 47

3. In tendering an offer of pardon the magistrate is not restricted to one individual: 24 hours may be considered as a proper interval to be granted to persons to whom pardon has been offered, before they are called upon to signify their determination to accept it or not. The depositions of the prisoners by whom the offer may be accepted, should be taken in the first instance before the magistrate in the presence of those whom they may affect. No. 405, 5th September 1825, ... I. 169

4. Affray not being one of the offences enumerated in Clause 1, Section 3, Regulation X. 1824, in which the magistrate may tender a pardon to the persons concerned, the evidence of participators in a case of affray is not admissible against other individuals implicated in the same offence. No. 535, 1st January 1830, ... I. 227

5. A magistrate after committing prisoners for trial cannot legally quash the commitment, release one or more of them and make him or them evidence for the prosecution in the same trial. No. 857, 24th January 1834, ... II. 149

6. A case of torturing and false imprisonment not considered as coming within the provisions of Regulation X. 1824, by which a magistrate is empowered to offer a pardon. No. 1026, W. C. 17th June, C. C. 28th July 1836, ... II. 266

7. The statement made by a prisoner on oath before a magistrate on conditional offer of pardon tendered to him under Regulation X. 1824, cannot be received as evidence against him, if committed for trial for the original offence under the orders of the Session Judge, on the ground of his having failed to fulfil the conditions under which the pardon was tendered to him. No. 1041, W. C. 5th August, C. C. 16th September 1836, ... II. 277

8. Under the provisions of Act XIX. 1837, the conviction of a person of a criminal offence cannot be considered as a bar to his giving his evidence against his supposed accomplices in the same crime. No. 1117, W. C. 8th December 1837, C. C. 5th January 1838, ... II. 330

9. A prisoner admitted as evidence, should be examined *de novo*, and not merely sworn to the truth of the statement made by him as defendant. No. 1137, C. C. 9th March, W. C. 24th March 1838, ... III. 8

10. The session judge was informed that the evidence of a person convicted of embezzlement, was, under Act XIX. 1837, admissible against another individual charged with the same offence; it resting of course with the judge to place such reliance on it as it might appear to deserve. No. 1173, W. C. 24th August, C. C. 14th September 1838, ... III. 28

11. A magistrate cannot offer a pardon to a person charged with participating in a crime committed in a district in which such magistrate has no jurisdiction. No. 1232, C. C. 14th July, W. C. 22d November 1839, ... III. 59

12. Held that the removal of prisoners, confined in a criminal jail on a requisition of security for good conduct, to another district, for the purpose of being induced to give evidence as approvers before the authorities appointed for the suppression of dacoity, is illegal. But if such prisoners have no objection to be removed to the jail of another district for the sake of giving evidence, the Nizamut Adawlut may sanction their removal. No 1240, W. C. 2d August, C. C. 30th August 1839, ... III. 60

ACTION, AMOUNT OF.

See "Original Suits, V." passim.
" "Stamps, III." passim.

ACTION, GROUND OF.

See "Original Suits, I." passim.

ACTION, LIMITATION OF.

See "Original Suits, VI." passim.

ADMINISTERING POISONOUS OR DELETERIOUS DRUGS.

1. On a conviction of administering poisonous or deleterious drugs to persons with a view of robbing them while in a state of insensibility, the judge of circuit must refer the trial to the Nizamut Adawlut, and the offenders are liable to 39 corahs and imprisonment in transportation for life. No. 365, 7th May 1824, ... I. 152

2. In a case of administering poison with intent to murder, death not ensuing, the commissioner is not competent to exceed a sentence of 7 years' imprisonment,—Section 2, Regulation XII. 1814, being applicable only to cases of *wounding* with intent to kill, and the Nizamut Adawlut having power, under Section 4 of that Regulation, to call for the proceedings and *enhance the sentence. (The Nizamut Adawlut cannot now enhance the sentence; but the session judge, if he consider the sentence which he can pass inadequate, may refer the trial to*

the Nizimut Adawlut. See Sections 4 *and* 6, *Act XXXI.* 1841.) No. 755, W. C. 7th February, C. C. 1st March 1833,..... II. 80

3. Persons charged with poisoning may be tried by the session judge specially appointed for the trial of thugs. No. 1107, C. C. 8th September, W. C. 29th September 1837, ... II. 323

4. The provisions of Cl. 5, Sec. 8, Reg. XVII. 1817, are not applicable to cases of "administering *intoxicating* drugs and theft." No. 1324, W. C. 21st March, C. C. 8th April 1842,..... III. 66

ADVOCATE GENERAL.

See "Justice of the Peace," No. 2.

ADULTERY.

1. The prohibition against proceeding in cases of adultery, except on a complaint of the husband of the adulteress, applies equally whether the prosecution be against the adulterer or adulteress. No 670, 13th January 1832, ... II. 32

2. In a trial for murder, the accused justified the murder by pleading an improper intimacy between his wife (the deceased) and another man. The magistrate, swearing the accused to the truth of the charge, proceeded against the man for adultery. Held that the husband's charge delivered in this manner was sufficient, and that a charge by petition was not necessary. No. 1199, W. C. 18th January, C. C. 1st February 1839,..... III. 43

AFFRAYS.

1. The act of assembling armed, or taking other unlawful measures, with an evident intention of committing a breach of the peace, is punishable by the magistrate as a misdemeanor to the extent of the powers vested in him by Sec. 19, Reg. IX. 1807. No 132, 3d August, 1813, ... I. 39

No. 664, 23d December 1831,..... II. 30

2. A magistrate may try a case of affray under the provisions of Reg. VIII. 1828, although before its enactment some of the prisoners implicated in the same affray had been tried by the court of circuit. The court of circuit, having ordered the magistrate to commit the prisoners, were directed, in the event of their not having tried them, to recall their order, and leave the magistrate to carry his sentence into execution. No. 594, 20th May 1831, ... I. 247

3. It would be illegal to punish a party who benefited by an affray, unless there were proofs that he was guilty of instigating or conniving at the affray. No 619, 21st Jany., 1831,..... II. 1

4. On the undermentioned dates it was ruled that a magistrate cannot try but must commit a case of affray attended with sword wounding: but this construction has been superseded by para. 4, Cir. Or. Nizamut Adawlut, dated 12th June, 1840. No. 623, 4th Feby. 1831, ... II. 8

No. 628, 4th March, 1831,..... II. 7

5. A magistrate may not, under Reg. VIII. 1828, sentence a person convicted of affray at once to two years' imprisonment. No. 774, C. C. 29th March, 1833, ... II. 89

6. It is not imperative on a magistrate to commit both parties in an affray. No. 778, C. C. 6th April 1833, ... II. 93

7. The power vested in a magistrate by Sec. 3, Reg. VIII. 1828, of awarding labor to a prisoner convicted of affray during the original term of imprisonment to which he may be sentenced, must be considered to extend equally to the further period he may be required to undergo, in default of paying the fine which the magistrate may think fit to impose on him; subject of course, as regards both periods, to the rule laid down in Sec. 3, Reg. II. 1834. No. 972, W. C. 7th August, C. C. 4th Sept. 1835, ... II. 224

8. The provisions of Reg. VIII. 1828, are applicable only to cases of affray regarding lands and their produce: and cannot be made to apply to other cases of affray, from whatever cause arising. No. 1154, C. and W. C. 1st June 1838, ... III. 16

AGENTS APPOINTED UNDER REGULATION XII. 1833.

1. A person may appoint one or more agents for the conduct of suits or other business; and should be required to state in his power of attorney that he acknowledges any acts jointly and severally performed by them in the discharge of their duty as agents, to be binding on him. No. 1210, C. C. 26th April, W. C. 10th May 1839, ... III. 49

ALLUVIAL LANDS.

See "Dispossession or disputed possession, summary process in the criminal courts *in cases of*," No. 19.

AMEENS.

1. A *moonsiff* may depute an *ameen* to make local enquiries in regular suits pending in his own court: but not in cases in which he has been directed by superior authority to make investigation himself. No. 863, C. C. 14th February 1834, ... II. 155

2. No fee can be levied for the remuneration of ameens appointed by Cir. Or. Sudder Dewanny Adawlut, 18th January, 1837, in cases in which he may be employed to investigate the sufficiency of security tendered to the Court of Sudder Dewanny

Adawlut, or other zillah courts, and the circumstances of persons wishing to sue *in forma pauperis*. These duties should be entrusted to the nazir or a moonsiff. No. 1078, C. C. 10th March, W. C. 31st March, 1837, ... II. 301

3. Ameens appointed under the Circular Order, S. D. A., 18th January 1837, are ministerial officers of the zillah courts and the judge may dismiss an ameen of his own authority, subject to the usual appeal. No. 1271, W. C. 16th January, C. C. 2d February, 1840; ..... III. 71

AMERICANS.

See "European British Subjects" passim.

ANNULMENT OF COMMITMENT.

See "Commitments," Nos. 1, 11, 12, 13, 14, 18, 20.

APPEALS.

I. To the King in Council.

1. An order of the Sudder Dewanny Adawlut rejecting a special appeal, in a suit which from its amount can be appealed to the King in Council, is open to appeal: and a translation of the whole of the proceedings of the zillah and provincial courts must be transmitted to England to enable His Majesty in Council to form a judgment of the merits of the case. [*Obsolete.*] No. 245, 15th March 1816, ... I. 82

2. An indigo factory pledged to the Court as security for the execution of a decree pending an appeal to the King in Council, can only be sold with the above lien upon it. No. 659, 30th September 1831, ... II. 27

3. Putnee talooks, as such, are admissible as security in cases appealed to His Majesty in Council to the extent of the surplus proceeds thereof, if otherwise unexceptionable. No. 1004, C. and W. C. 25th March 1836, ... II. 249

4. No appeal lies to His Majesty in Council from an order of the Sudder Dewanny Adawlut refusing, on the grounds specified in Clause 3, Section 12, Regulation XXVIII. 1814, to admit an appeal *in forma pauperis* from the decision of a zillah judge in a suit in which the sum or value awarded amounted to 50,000 rupees. No. 1025, W. C. 8th July, C. C. 4th August 1836, ... II. 265

5. Persons wishing to appeal to His Majesty in Council *in forma pauperis* must, equally with other appellants, furnish security (*mulzamines*) to the extent of 5000 rupees to cover the original costs of appeal, and in a further sum of 5000 rupees to reimburse to the Hon'ble the Court of Directors any expense to which they may be put, in the event of their being called upon under the provisions of Section 22, 3 and 4 William IV. Chap. 41, to conduct the appeal on behalf of the party. [*The total amount of security now required is* 25000 *Rs.*] No. 1032, C. and W. C. 12th August 1836, ... II. 272

6. Decrees of His Majesty in Council should be sent to the court of the district in which the cause of action arose, to be carried into effect in the same manner and under the same rules as other decrees; leaving any party dissatisfied with the judge's proceedings or orders to appeal therefrom in the usual manner. The decree-holder is entitled to his interest and mesne profits without a new suit. No. 1066, 17th February 1837, ... II. 293

7. Orders of the Sudder Dewanny Adawlut in miscellaneous cases are not appealable to His Majesty in Council. No. 1102, C. C. 18th August, W. C. 15th September 1837, ... II. 318

II. Appeals from one's own Decisions.

1. A judge of a provincial court cannot sit on the trial of appeals from judgments passed by himself in the capacity of zillah judge, even in company with other judges. No. 70, 29th November 1810, ... I. 16

2. A zillah judge cannot try an appeal, regular or special, from a judgment passed by himself as register. No. 305, 27th August 1819, ... I. 123

3. Mr. Walpole, as zillah judge, passed a decree for land and *wasilaut*, and the decree was confirmed by the provincial court to which Mr. Walpole had been promoted. In execution of the decree a question arose as to the *quantum of wasilaut*, and the order of the zillah judge on this question was appealed to the provincial court. Held that as the order fixing the amount of *wasilaut* was not passed by Mr. Walpole, and the question for decision was one on which he had not recorded an opinion, he was competent to give an opinion on the case. No. 497, 13th March 1829, ... I. 212

4. A zillah judge may decide a lakhiraj suit, on which he has reported in his capacity of collector. No. 779, C. C. 12th April, W. C. 10th May 1833, ... II. 93

III. Regular Appeals by whom Cognizable.

1. After the promulgation of Regulation V. 1831, all appeals from the decisions of the zillah judges, which have not been preferred to the provincial court prior to the date fixed for the operation of the Regulation, lie to the Sudder Dewanny Adawlut at whatever time the original suit was instituted. No. 673, 27th January 1832, ... II. 33

2. After the promulgation of Regulation V. 1831, sudder ameens cannot try appeals. Nor can the principal sudder ameens, unless the appeals have been transferred to those offices by the judge with the

sanction of the Sudder Dewanny Adawlut. No. 676, 24th February 1832, ... •II. 84

3. After the promulgation of Regulation V. 1831, the Sudder Dewanny Adawlut cannot interfere in the receipt of petitions of appeals from the decisions of a zillah judge in appeal from the decisions of sudder ameens or moonsiffs; his decisions in such cases being final. The rule applies to cases in which the decision of the judge was passed prior, as well as to those passed subsequently, to the promulgation of the Regulation. [A special appeal now lies to the S. D. A under Act III. of 1843.] No. 688, W. C. 27th April, C. C. 18th May 1832, ... II. 41

4. After the promulgation of Regulation V. 1831, no appeal lies to the provincial court, unless the application for the admission of appeal was preferred prior to the date fixed for the operation of the Regulation. No 748, W. C. 4th January, C. C. 25th January 1833, ... II 75

5. When it may appear to the Sudder Dewanny Adawlut that a moonsiff or sudder ameen has tried a suit, which from its amount or other cause was not legally within his cognisance, and the zillah or city judge has decided an appeal therefrom on its merits, without adverting to this fact, the Court will admit a summary appeal, and, considering the original decision of the sudder ameen or moonsiff, and the decision of the zillah judge thereon equally null and void, will quash all the proceedings in the case and direct the judge to cause the original suit to be tried *de novo* by the authority competent to do so. [*This construction has been superseded on the ground of the jurisdiction of the court in such cases being barred by the positive rule in Clause* 1, *Section* 26, *Regulation V.* 1831, *that the decisions of the zillah and city judges in appeal from the decisions of sudder ameens and moonsiffs shall be final "any thing in the existing regulations to the contrary notwithstanding," and it has been revoked by the Circular Order, Sudder Dewanny Adawlut, dated 26th September* 1842. *But see No.* 3, *above.*] No. 1003, 18th March 1836, ... II. 249

6. In suits exceeding 5,000 rupees, if the principal sudder ameen decree a sum less than that amount, the appeal lies to the Sudder Dewanny Adawlut No 1282, C. C. 7th August, W. C. 29th August 1840, ... III. 76

7. A suit having been transferred from Bhagulpore to Purnea under Section 2, Act XXVII. 1838, and referred to the sudder ameen for trial, an appeal will lie from the sudder ameen's decision to the Purnea and not to the Bhagulpore zillah court. No. 1336, C. C. 13th May, W. C. 27th May 1842,..... III. 90

8. In a suit to recover a Government 4 per cent. promissory note for sicca rupees 5,000, pledged for rupees 4,600, redeemable for rupees 4,930, held that the suit having been brought to recover a note for rupees 5,000 without mention of any currency, which amount is covered by a stamp of 150 rupees, and no objection to the valuation having been urged in the principal sudder ameen's court, the appeal lies to the zillah judge, and not to the Sudder Dewanny Adawlut. No. 1358, W. C. 5th August, C. C. 2d September 1842, ...III. 96

IV. Limitation of time in Appeals.

1. In calculating the period of appeal, the period between the date on which the stampt paper was given in, and that on which the copy of the decree was delivered or tendered to the party, must be excluded: the same rule applies whether the appeal be regular, special, or summary. Nos. 241 and 413, 17th February 1816, 3d March 1826, ... I. 81, 173

2. A zillah judge is vested with discretionary power to admit an appeal from the decision of a sudder ameen, although the petition may not have been presented within the prescribed period, if the appellant shall shew satisfactory cause for not having presented it before. No. 177, 18th April 1828,... I. 202

3. On the rejection of a petition of review the party is not *entitled* to a deduction of the time his petition was pending in the lower court, in calculating the period allowed for the admission of an appeal. But the appellate court will take the plea into consideration, and admit the appeal or not as may appear just and proper. No. 1127, W. and C. C. 2d February 1836, ...III. 2

4. The period allowed for appealing from the orders of moonsiffs in miscellaneous cases (copies of which orders are to be granted on plain paper) should be calculated from the date of the order appealed from, deducting the interval that may elapse between the date of the copy being applied for and its being ready for delivery. No. 1323, W. C. 9th March, C. C. 8th April 1842.....III. 86

V. Preparation and trial of Appeals.

1. Though strictly speaking security for costs should be filed with the petition of appeal, and no appeal can be admitted until it is given, the court may, provided good and sufficient reason is shown why the security was not filed with it, receive the petition, and allow the petitioner time to furnish security. No. 369, 21st September 1824, ... I. 158

2. After the promulgation of Regulation V. 1831, the zillah judge is to perform all the duties in regard to the submission of appeals to the Sudder Dewanny Adawlut heretofore performed by the provincial courts. No. 681, 9th March, 1832, ... II. 37

3. The translation of Bengalee papers in the record of cases appealed to the Sudder Dewanny Adawlut into Persian, must be made at the cost of Government. It is only necessary to translate the papers which are material to the issue of the case. [*Superseded by the abolition of the use of the Persian language.*] No. 699, 29th June 1832, II. 46

4. The Court determined, with reference to the Circular Order of 18th May 1832, (which instructed the zillah judges not to cause the record of appealed cases to be copied, or the original proceedings to be forwarded to the Sudder Dewanny Adawlut until directed by a precept so to do,) that security need not be demanded until the appellate court have determined to call upon the respondent to file an answer to the petition of appeal. No. 709, 27th July 1832, ... II. 53

5. In cases appealed to the Sudder Dewanny Adawlut, copies must be kept of all papers sent down: but only material papers must be submitted, such as the original pleadings, depositions and exhibits, with a list of them. *Isminuveesees, nazir's* returns, and other miscellaneous papers and proceedings, need not be sent until specially called for. The proceedings are not to be copied and sent down till called for by a precept. No. 742, 14th December 1832, ... II. 70

6. When there are several defendants, and the decree is given against all, without any specification of what is due from each, the person who first appeals must file his petition on the full amount of the decree: the appeal would not be admissible, were he to write on it the amount of his alleged share. If it be stated in the decree, or can be gathered from the proceedings, what is the share of each defendant, each may appeal separately on his own share only. In a case where the separate liabilities of several defendants holding under distinct titles were not mentioned in the decree, the zillah judge was directed to amend the decree by inserting the amount due by each defendant, in order that they might not be barred their individual right of appeal. No. 849, 20th December 1833, ...II. 144

7. It is not considered necessary for the zillah judges to require appellants, in cases appealed from the decisions of the native judges, to give security until the respondent has been summoned. No. 863, 14th February 1834, ... II. 155

8. The zillah judge cannot compel appellants from the decisions of principal sudder ameens, sudder ameens, and moonsiffs, to file the *moojibaat*, or reasons for appealing, with the petition of appeal. No. 863, 14th February 1834, ... II. 155

9. When one half of the amount claimed has been decreed to the plaintiff, if he do not appeal or appear as respondent on the appeal of the defendant, the court cannot amend the decree in his favor. But if he do appear, and in his reply to the petition of appeal object to that part of the decree which dismissed part of his claim, it is competent to the court to go into the whole merits of the case, as affecting both parties, and decide it in the same manner as if the plaintiff had preferred a separate appeal. No. 868, C. C. 14th February, W. C. 6th May, 1834, ... II. 157

10. When an appeal has been admitted from a dismissal on default by a moonsiff, the judge cannot confirm the dismissal with reference to the reasons assigned for neglect in the original trial, but must decide the case on its merits, or direct the moonsiff to do so, reversing the dismissal on default. The same rule applies when defendant appeals on the ground of an exparte decision having been given against him, when he was prevented by circumstances from attending court. No. 870, W. C. 21st February, C. C. 27th March 1834, ... II. 159

11. The Court of Sudder Dewanny Adawlut recorded their opinion that the appellate court ought generally to confine themselves to the decision of the objections made to the decree by the parties who appeal: but that where obviously requisite for the ends of justice, the jurisdiction of the appellate court may extend to all the interests affected by the decree. No. 997, C. C. 2d January, W. C. 22d January 1836, ... II. 242

12. According to Clause 2, Section 8, Regulation XXVI. 1814, petitions of appeal to the judge against decisions of the principal sudder ameens, sudder ameens, and moonsiffs, need not be accompanied by a copy of the decree appealed from. No. 1159, C. and W. C. 20th July 1838, ... III. 18

VI. Regular Appeals, summarily decided without summoning the Respondent.

See "Decisions summarily confirmed," *passim.*

VII. Special Appeals.

It is necessary to observe, with reference to the following Constructions, that all decisions in regular appeal passed by the lower courts are now specially appealable to the S. D. A. under Act III. of 1843.

1. Clause 3, Section 19, Regulation XIII. 1810, does not preclude a special appeal to the provincial court from the decision of the zillah or city judge in appeal from the decisions of the native commissioners.—[*Superseded by Section 28, Regulation V. 1831, by which the judge's decision in appeal from moonsiffs and sudder ameens, is made final.*]—No. 68, 30th August 1810, ... I. 16

2. On the rejection of a special appeal the petitioner cannot demand the restitution of the institution fee paid: but the court rejecting the petition, if they think it should be returned, will submit the case to the Sudder Dewanny Adawlut, who are authorized by Section 3, Regulation III. 1802, to direct the return thereof.—[*Superseded by Clause 5, Section 2, Regulation XXVI. 1814, which authorizes the courts in such case to refund any portion of the fee not exceeding 3-4ths.*] No. 109, 20th August 1812, ... I. 29

3. A special appeal only will lie from the decisions passed by judges in appeals from the decisions of the

registers after the 1st February 1815, whether the suits were referred to the registers before, or after that date. So also in suits tried originally by the zillah and city judges and in appeal by the provincial courts, a special appeal only will lie to the Sudder Dewanny Adawlut. No. 245, 15th March 1816, I. 82

4. Should the Sudder Dewanny Adawlut reject a petition of special appeal in a suit which by its amount is appealable to the King in Council, the appellant may appeal to His Majesty in Council, and the proceedings held in the zillah or city court and provincial court, will be translated and transmitted to England. No. 245, 15th March 1816, ... I. 82

5. The decisions passed by the provincial courts, in all special appeals, after the 1st February 1815, are final. No. 245, 15th March 1816, ... I. 82

6. A special appeal cannot be admitted to reverse an error in the determination of facts, when the judgment may appear to be manifestly without, or contrary to, evidence: for under Section 2, Regulation XXVI. 1814, the facts must be assumed as stated in the decree. The Court declined stating whether the fact of exorbitant damages having been given was a ground for admitting a special appeal. No. 246, 1st May 1816, ... I. 83

7. A person having inadvertently omitted in his petition of special appeal to state the grounds on which he appealed, may be allowed to supply the omission by a supplementary petition on the stamp prescribed by Section 17, Regulation I. 1814. No. 248, 6th May 1816, ... I. 86

8. The order of a single judge of a provincial court for admitting a special appeal is final. [*By Section 5, Regulation IX. 1819, it is necessary that two judges of a provincial court or the Sudder Dewanny Adawlut should join in admitting a special appeal: but Clause 4, Section 2, Regulation IX. 1831, restored to a single Judge of the Sudder Dewanny Adawlut the power of admitting a special appeal.*] No. 262, 26th December 1816, ... I. 91

9. The zillah or city judge need not report to the provincial court the admission of a special appeal from the decision of a register. No. 336, 23d February 1821, ... I. 138

10. The provincial court cannot authorize a zillah or city judge to admit a special appeal, when, under the Regulations, such appeal is not admissible. No. 354, 30th May, 1823, ... I. 147

11. The circumstance of a rent-free suit reported upon by a collector having been referred for decision to a sudder ameen, was held to be a good ground for admitting a special appeal; as also was the fact of a case having been decided without reference to an award of arbitration. No. 499, 27th March 1829, ... I. 213

12. Documents filed with petitions of special appeal are not chargeable with the exhibit fee on being filed. [See Construction 961, No. 18 *post.*] No. 537, 6th January 1830, ... I. 228

13. The zillah judge having nonsuited the plaintiff, he appealed to the provincial court, who decided the case on its merits. Held that the appeal thereon to the Sudder Dewanny Adawlut should be special. No 552, 14th May 1830, ... I. 233

14. The provincial court is competent to direct a zillah judge to re-hear a petition of special appeal which he had irregularly dismissed. No. 641, 10th June 1831, ... II. 12

15. The order of a judge rejecting a special appeal from the decision of a register in appeal from that of a sudder ameen is final, and can only be set aside by the judge's obtaining the sanction of the Sudder Dewanny Adawlut to review it. No. 810, C. C. 2nd August, W. C. 20th September 1833, ... II. 115

16. Undecided petitions of special appeal from the decisions of sudder ameens and moonsiffs, received by the Sudder Dewanny Adawlut from the provincial courts on their abolition, must be disposed of by the Sudder Dewanny Adawlut, who will admit or reject the special appeal as may appear advisable in each case under the general Regulations. No. 814, W. C. 23d August 1833, C. C. 27th September 1833, ... II. 118

17. A single judge of the Sudder Dewanny Adawlut may reject a petition for special appeal received from the provincial court, though one judge of the provincial court, while the application was pending before it, had recorded an opinion that it should be admitted. No. 846, W. C. 29th November, C. C. 20th December 1833, ... II. 142

18. In applications for special appeal no exhibit fee is leviable on documents filed with the petition until the appeal is admitted. No. 961, W. C. 26th June, C. C. 7th August 1835, ... II. 219

19. A petition of special appeal must be considered as miscellaneous until the appeal is admitted; consequently it is not necessary in such cases to issue the notice prescribed by the Circular Orders, 5th November, 1812, which refers to suits admitted and pending. A copy of the decree appealed from must accompany the application. No. 1139, C. and W. C. 2d March 1838, ... III. 8

20. A petition of special appeal once struck off by the zillah judge cannot be re-admitted by him without the sanction of the Sudder Dewanny Adawlut. No. 1171, W. C. 10th August, C. C. 7th September 1838, ... II. 27

VIII. Summary and Miscellaneous Appeals.

1. The judge may admit a summary appeal from the decision of a sudder ameen, after the expiration of the prescribed period for appealing, on satisfactory explanation being given for the delay. No. 477, 18th April 1828, ... I. 202

2. In cases in which a summary appeal is admissible, under the provisions cited, such appeal may be admitted, although the appellant may, *erroneously*

or from other cause, have applied for a special appeal on stampt paper of the prescribed value : and in such case the stamp duty paid by the appellant on his petition shall be returned to him, with the exception of two rupees, the value of a proper stamp for a summary appeal. No. 613, 25th November 1831, I. 254

3. The rejection of a summary appeal does not bar the admission of a regular appeal. No. 723, 19th October 1832, ... II. 59

4. Though the provincial court cannot receive new appeals after the promulgation of Regulation V. 1831, they may receive and act upon petitions appealing from the zillah judge's orders passed in execution of their decrees. No. 753, C. C. 1st February, W. C. 1st March 1833,..... II. 79

5. The summary appeal authorised by Section 3, Regulation XXVI. can be admitted only when a suit has been dismissed or rejected on the ground of delay, informality, or other default, without an investigation of the merits. The words "*or in opposition to the Regulations*" used in Clause 9 of the Section apply to cases which have been so dismissed or rejected on grounds not warranted by the Regulations, or to the omission prior to the dismissal or rejection of the suit of any of the forms prescribed by the Regulations for calling on a party to attend and shew cause why his suit should not be dismissed, &c. No. 805, C. C. 19th July, W. C. 6th September 1833,... II. 113

6. The Court of Sudder Dewanny Adawlut are competent to exercise the powers vested in them by Clause 2, Section 2, Regulation IX. 1831, and Section 15, Regulation VII. 1832, without calling for the proceedings, whenever the order or decision appealed against, whether in a regular or summary suit, may appear to them manifestly unjust or illegal, or on any of the grounds defined in the Clause first cited. No. 839, W. C. 11th October, C. C. 8th November 1833, ... II. 132

7. No appeal lies to the Sudder Dewanny Adawlut from the order of a zillah judge dismissing a vakeel of a moonsiff's court. No. 846, C. C. 6th December, W. C. 27th December 1833, ... II. 142

8. The order of a zillah judge refusing to take security from a defendant, who it is alleged is about to abscond, is open to appeal to the Sudder Dewanny Adawlut. No. 963, C. C. 26th June, W. C. 31st July 1835, ... II. 219

9. The Construction 1003, relative to the power of the Sudder Dewanny Adawlut to admit summary appeals from the decisions of the zillah and city judges in cases tried originally by the sudder ameens and moonsiffs, has been rescinded by Circular Order, S. D. A. 26th September 1842. [*But see Section III. above, Nos. 3 and 5.*] No. 1003, 18th March 1836, ... II. 249

10. Though the zillah judge's order in execution of a moonsiff's decree is final, yet in a case in which the moonsiff had omitted to provide in his decree for the payment of interest, and the judge, on the decree-holder's applying to him to supply the omission under the Circular Order of 11th September 1839, rejected his application, it was held that as the order originated with the judge, and was not passed in appeal from the order of a lower court, the Sudder Dewanny Adawlut were competent to receive an appeal therefrom, and either direct the judge to allow interest, or reverse his decision and pass a modified order according to the Circular cited. No. 1055, W. C. 17th October, C. C. 25th November 1836, ... II. 285

11. Orders of the Sudder Dewanny Adawlut in miscellaneous cases are not appealable to the King in Council. No. 1102, C. C. 18th August, W. C. 15th September 1837, ... II. 318

12. Orders passed by a zillah or city judge under Section 114, Regulation X. 1819, for imposing fines for the illicit manufacture, &c. of salt are final in certain cases, and not open to appeal, on the merits, to the Sudder Dewanny Adawlut : but it was held that if the decree passed by the lower court in a case of this nature were manifestly illegal on the face of it, or any gross or glaring irregularity should have occurred in the course of the investigation so as to vitiate the proceedings, it would be competent to the Court of Sudder Dewanny Adawlut, under its general power of superintendence and control, to order the zillah judge to revise his proceedings with a view to the correction of the error observable in them, and to proceed in the case according to law. No. 1113, W. C. 17th November, 1837, C. C. 1st January, 1838,..... II. 327

13. Miscellaneous orders passed in execution of a decree in regard to mesne profits, interest, or other matters in dispute between the parties in a suit, which may be involved in the decision, must be looked upon as a necessary process for carrying into effect the original intentions of the court passing the decree, in respect to a point on which it may in fact be said to have passed a formal judgment; and cannot therefore be considered as forming a new ground of action. No. 1129, W. and C. C. 9th February 1838,..... III. 4

14. A summary appeal was admitted from the summary order of a judge under the provisions of Clause 1, Section 5, Regulation V. 1830, in case of by a ryot to settle his accounts with an indigo factory before the expiration of his contract : the judge having no summary jurisdiction in such case. No. 1130, C. and W. C. 9th February 1838, ... III. 4

15. It was not competent to a zillah judge to impose a fine for a litigious appeal under Section 3, Regulation XIII. 1796, on an appellant in a miscellaneous case, the rule therein laid down not being applicable to such appeals. No. 1138, C. and W. C. 16th March 1838, ... III. 8

16. Appeals from orders passed by a principal sudder ameen in execution of his own decree in a suit above the value of 5,000 rupees, as well as

appeals from orders passed in such suits under Sections 4 and 5, Regulation II. 1806, lie direct to the Sudder Dewanny Adawlut; but appeals in summary and miscellaneous cases made over to a principal sudder ameen under Section 8, Act XXV. 1837, lie in the first instance to the zillah judge, and specially to the Sudder Dewanny Adawlut, whether the amount be above or below 5,000 Rupees. No. 1148, W. C. 27th April, C. C. 11th May 1838, III. 12

IX. Appeals in Summary Suits for Rent.

See "Rent, summary suits and process for," Nos. 15, 19, 34.

X. Appeals in Summary Suits for Dispossession.

See "Dispossession or disputed possession, summary process of civil courts in cases of."

XI. Appeals in Criminal Cases.

See "Magistrates' orders, appeals from and revision of."

See "Dispossession or disputed possession, summary process of criminal courts in cases of."

APPLICATIONS.

See "Stamps, VI."

APPROVERS.

See "Accomplices," *passim.*

ARBITRATION.

1. The Regulations XVI. 1793, XV. 1795, and XXI. 1803, refer only to suits for money and personal property, and disputed accounts arising out of suits for real property, and the reference of a claim for landed property to arbitration is not warranted. [But see construction 253, No. 4, *post.*] Nos. 1 and 37, 3d May 1798, 10th June 1808,..... I. 1&9

2. Appeals against decisions founded on the award of arbitration should not be dismissed under Section 28, Regulation V. 1793, until they have been formally admitted. No. 48, 18th September 1809, I. 12

3. Applications for the execution of awards of private arbitration, are to be received and enforced under the rules applicable to summary process. No. 225, 31st October 1815,..... I. 74

4. Regulations XVI. 1793, and XXI. 1803, having been extended generally by Regulation VI. 1813, to suits respecting property in land or limited tenures therein, suits of this description may under Section, 2 Regulation VI. 1813, be referred to arbitration, whatever be the amount. No. 253, 7th August 1816, ... I. 87

5. *Canoongoes* cannot be compelled to attend *punchayuts*, or act as arbitrators. When the nomination of an arbitrator may rest with the civil courts, they should avoid as far as practicable the appointment of *canoongoes*; and when such selection may be unavoidable, they should immediately notify the appointment to the collector that he may provide for the due discharge of the duties of the office. No. 286, 4th February 1818, ... I. 109

6. When a suit is submitted to arbitration, the court, previously to the arbitrator or arbitrators entering upon the arbitration, should require the parties to agree to one of the provisions detailed in Section 5, Regulation XVI. 1793, for completing the award in the event of the arbitrators not delivering it by the limited time. When the preliminaries had been omitted, and the arbitrators were not unanimous, it was held that their proceedings must be considered void and of no effect, and that the case must be tried *de novo*. No. 395, 24th June 1823, ... I. 165

7. Regulation VI. 1813, as appears from its preamble, relates exclusively to contests and suits respecting land, and is inapplicable to other matters, such as debts, disputed accounts, partnership, and the like. No. 472, 22d February 1828, ... I. 201

8. A magistrate acting under Regulation XV. 1824, cannot refer disputes to arbitration. [Superseded by Section 9, Act IV. 1840.] No. 571, 6th August 1830, ... I. 239

9. On the application of one of the parties to the civil court, to cause execution of an arbitration award, the judge is not authorized to refer the case from the civil to the criminal court. It was his duty, as civil judge to determine whether the award should be executed or not, without reference to a certain order of the Nizamut Adawlut annulling certain orders of the magistrate relating to the case; the said order not being held to affect orders passed by the judge in the civil court. No. 609, 18th November, 1831,... I. 252

10. The decisions of punchayuts appointed under Regulation IX. 1833, should be enforced by the revenue authorities, the judicial functionaries having no power to carry them into effect. No. 895, W. C. 5th September, C. C. 26th September 1834,... II. 179

11. Under Section 3, Regulation XVI. 1793, a judge cannot refer to a single arbitrator a suit for money or personal property, the amount or value of which may exceed 200 rupees. This restriction applies to summary as well as to regular suits, but does not appiy to suits referred to private arbitration by individuals under Section 3, Regulation VI. 1813. No. 936, W. C. 6th March, C. C. 27th March 1835, ... II. 203

12. The mere circumstance of arbitration bonds not having been executed cannot, of itself, bar the summary jurisdiction of the court, in cases referred to private arbitration under Sections 2 and 3, Regulation VI. 1813: but if the reference to arbitration be not denied, the court should proceed summarily to enforce

the award, subject of course to all the rules and limitations laid down in the enactment in question. When, however, the agreement to abide by the award be disputed, the Sudder Dewanny Adawlut consider that it would be dangerous to allow this point to be determined summarily, and are of opinion that, in such cases, the parties should be referred to a regular suit. No. 1133, C. and W. C. 11th May 1838, ... III. 16

13. Principal sudder ameens are competent, under Section 2, Regulation XVI. 1793, with the consent of the parties, to refer suits to arbitration. No. 1292, C. C. 26th March, W. C. 10th April 1841, ... III. 78

14. Sudder ameens and moonsiffs are competent under the provisions of Section 2, Regulation XVI. 1793, with the consent of the parties, to refer suits to arbitration. No. 1320, C. C. 11th February, W. C. 4th March 1842, ... III. 85

ARREST.

1. In the event of a legal arrest under the warrant of a civil court, and a forcible rescue from the custody of its officers, the magistrate is not empowered, on proof of such rescue, to order the police officers forcibly to enter the house where the person may be, and apprehend and forward him to the civil court. In such case the civil court should proceed against the party agreeably to Section 25, Regulation IV. 1793. No. 765, C. C. 8th May, W. C. 12th April 1838, ... II. 86

2. The court considered the magistrate of Bordwan to have acted unwarrantably in arresting a police daroghs of Beerbhoom, while in the execution of his duty in serving a warrant issued to him by the magistrate of Beerbhoom. No. 851, 26th December 1833, ... II. 145

3. A person being in attendance on a criminal court on bail to answer a criminal charge, is not liable to arrest under civil process. No. 885, C. C. 23d May, 1834. ..... II. 171

4. Nor is a person who is in attendance on a collector to defend a suit or claim pending before that officer; and in this case, as well as in that of a person in attendance on a criminal court, the protection will last only as long as the party is in actual attendance, or coming to, or returning from the court. No. 893, C. C. 1st August 1834, W. C. 4th July 1834; No. 1089, C. and W. C. 28th April 1837, ... II. 178 & 308

5. The court which issued the process of arrest is alone competent to release the prisoner. No. 1000, W. C. 5th February, C. C. 11th March 1836, II. 45

6. A defendant, not being within the limits of the district in which the suit against him was instituted, cannot be arrested in default of security under the rules of Section 4, Regulation II. 1806, No. 888, C. C. 4th July, W. C. 25th July 1834, ... II. 175

7. The civil court is not competent to require from a magistrate delivery on civil process of the person of a prisoner, after the expiration of his imprisonment in the criminal jail. No. 1276, C. C. 20th March, W. C. 24th April 1840, ... III. 73

ASSEMBLING ARMED MEN.

See "Affrays," No. 1.

ASSESSORS.

1. A difference of opinion from assessors or jurors is not a legal ground for referring a trial to the Nizamut Adawlut. No. 783, W. C. 25th March, C. C. 12th April 1838, ... II. 96

2. A trial, commenced with the aid of the law officer, cannot be concluded with the aid of a punchayut. No. 835, C. C. 4th October, W. C. 15th November 1833, ... II. 131

3. East Indians are equally qualified with other persons amenable to the courts, to sit as jurors or assessors on the trial of natives of India. No. 1019, W. C. 1st July, C. C. 29th July 1836, ... II. 262

See "Postponed trials," No. 4.

ASSETS.

See "Execution of Decrees, V."

ASSISTANCE, WRIT OF.

1. The civil courts are not to interfere with the execution of decrees of the Supreme Court, unless a writ directing execution be issued by that court. No. 267, 23d July 1830, ... I. 237

2. Claims which may be preferred in the course of executing a decree of the Supreme Court, by individuals not parties to the suit before that court, may be received and conducted in a summary form, as authorized by the general regulations in force in executing decrees of the established *mofussil* courts. No. 636, 20th May 1831, ... II. 9

3. In execution of a decree of the Supreme Court in favor of A, founded on a deed of mortgage executed by B, the magistrate was considered to have acted judiciously in refusing to use forcible means to oust a third party from property in their possession, which they held under a decree of the provincial court founded on a deed of agreement executed by B: and was told he should confine his aid and assistance to the sheriff's bailiff to preventing any breach of the peace, leaving the mortgagee to sue the third party in the zillah court for the property claimed by him under the decree of the Supreme Court. No. 800, 21st June 1833, ... II. 108

ASSISTANT TO THE COLLECTOR.

1. A collector is authorized by Clause 3, Section 8, Regulation IV. 1821, to delegate only his

fiscal duties to his assistant, but not those delegated to himself by the judge either under Regulation XIV. 1824, Regulation II. 1819, or any other Regulation; nor the duties of magistrate vested in a collector, the delegation of which latter to an assistant would, in some instances, be contrary to the provisions of Regulation IX. 1807, Regulation III. 1821, and Regulation L of 1822. No. 603, 21st October 1831, I. 250

ASSISTANT TO THE JUDGE.

1. Assistants to judges cannot be employed in investigating and deciding miscellaneous cases relating to execution of decrees. No. 735, W. C. 9th November, C. C. 7th December 1832,..... II. 65

ASSISTANT TO THE MAGISTRATE.

1. The assistant to a magistrate is not competent to pass an order for commitment in cases wherein the offence may appear to require a more severe punishment than he is competent to adjudge; but he must submit his proceedings to the magistrate. No. 191, 18th January 1825, ... I. 59

2. An assistant vested with special powers described in Section 2, Regulation III. 1821, is competent to order *muochulkas* and security to be taken under the provisions of Regulation IV. 1825. No. 529, 20th November 1829,..... I. 224

3. An assistant vested with those powers cannot require security for good conduct from a prisoner sent in by a darogha under Section 20, Regulation XX. 1817, or commence an enquiry into the character of a prisoner made over to him for trial on a specific charge. Should he deem it necessary to require security from a prisoner not convicted of the crime charged, he should report to the magistrate to that effect. No. 548, 23d April 1830,..... I. 231

4. An assistant is not competent to take cognizance of complaints against European British subjects to the extent specified in 53d Geo. III. Cap. 105. The powers in question can only be exercised by a person possessing the full powers of magistrate. No. 595, 17th June 1831,..... I. 248

5. In cases referred to an assistant for trial and decision, he may acquit or convict according to his judgment. But in cases referred merely for report, he has no power to release the prisoners, but should submit his opinion in the required report to the magistrate, who will pass the proper order. No. 612, 25th November 1831,..... I. 253

6. A magistrate is authorised, under the general powers vested in him by the Regulations as a superintending authority over his assistant, to revise the proceedings of the latter without an appeal, in the same manner as the provincial courts of circuit were, by the construction of 10th November 1826, No. 427, declared competent to revise those of the magistrate. [But see Sections 2 and 5, Act XXXI. of 1841.] No. 722, 12th October 1832, ... II. 59

7. An assistant vested with special powers is competent to try suits under Regulation XV. 1824 (rescinded); and the magistrate is competent, under the general power vested in him, to confirm, alter, or reverse the order passed by the assistant in such suits. No. 769, C. C. 15th March, W. C. 4th April 1833. ..... II. 87

8. Under the provisions of Section 2, Regulation XIII. 1797, an assistant to a magistrate, on removal from one district to another, whether under the orders of Government or the commissioner of the division, should take the prescribed oath of office before the magistrate of the zillah to which he may have been newly appointed: and the magistrate is, in such cases, competent, and indeed required by the provisions of the abovementioned enactment, to administer it to him without any special orders from Government on the subject. No 850, W. C. 20th December 1833, C. C. 4th January 1834, ... II. 145

9. The deputation allowance of assistants to the magistrates authorized by Section 3, Regulation XI. 1824, if not paid by the parties, should be realized by the same process as the costs of suit in civil cases; and a commissioner of circuit is competent to exercise the same power as the magistrate in ordering the deputation of an assistant duly qualified, [that is, vested with special powers,] and to adjudge the payment of his deputation charges. No. 678, 24th February 1832, II. 34

10. Assistants vested with special powers cannot award a longer term of imprisonment in lieu of stripes than one month. They are however at liberty, as in other cases in which they deem the prisoner deserving of a degree of punishment beyond their competency to award, to return the case to the magistrate for the issue of final orders, stating their own opinion thereon. No. 893, W. C. 18th April, C. C. 2d May 1834, ... II. 170

11. An assistant vested with special powers is competent to dispose of cases under Act IV. 1840. No. 1844, W. C. 20th June, C. C. 8th July 1842, ... III. 92

ATTACHMENT.

1. In cases requiring the appointment of a manager of a joint and undivided estate attached under Section 26, Regulation V. 1812, endeavor should be made in the first instance to prevail on one of the family or friends of the sharers to undertake the duty gratuitously: but in the event of its being necessary to make a pecuniary remuneration to the manager, the amount must be fixed, on consideration of the circumstances of the case, by the judge making such appointment. The manager so appointed must account to the several proprietors for their respective profits arising from the estate, after discharging the public revenue and deducting the compensation he may be authorised to receive. No. 115, 3d December 1812, ... I.

2. In cases of disputes referred from the criminal to the civil courts, under Regulation VI. 1813, a reasonable time should be allowed to the parties to attend and bring forward their proofs, as required by the perwannehs addressed to them under Clause 4, Section 5, Regulation VI. 1813. Should they fail to attend within that period, so as to admit of the requisite investigation being made, and the attachment of the land in dispute appear necessary to prevent a breach of the peace, the measure may be adopted in the manner prescribed in that clause. [*Rescinded; see Regulation XV. 1824, and Act IV. of 1840.*] No. 140, 23d December 1813, ... I. 42

3. The public sale of lands for arrears of public revenue in all cases wherein the Governor General in Council, or Board of Revenue, or Board of Commissioners, in cases left to the discretion of those boards, may judge it proper to direct such sales, is not restricted or in any respect affected by the appointment of a manager under Section 26, Regulation V. 1812. No. 142, 3d February 1814, ... I. 44

4. The manager so appointed must be considered in the light of an agent acting for the benefit of his principals, and bound to a faithful discharge of the duty committed to him. The "proper security" directed to be taken from such manager is not restricted to personal bail for appearance, but extends to security for a faithful account of the manager's receipts, and should be proportioned "to the extent thereof" as declared in Section 6, Regulation V. of 1799, and Clause 3, Section 16, Regulation III. 1803, with respect to administrators appointed by the civil courts in the cases therein provided. No. 142, 3d February 1814, ... I. 44

5. The revenue authorities possess the same power of interference in the case of a manager appointed by a civil court under Regulation V. 1812, Section 26, as they have over a manager appointed by the proprietor of the estate. [*By Regulation V. 1827, all attached estates are to be placed under the collector's management.*] No. 142, 3d February 1814, ... I. 44

6. A judge should not attach a defendant's lands till he has satisfied himself by proof, that sufficient grounds, as set forth in Clause 1, Section 5, Regulation II. 1806, for requiring *mulzamiuee* from the defendant, actually exist; and until the defendant has failed to furnish security, within a reasonable time to be allowed for the purpose. No. 190, 14th December 1814, ... I. 59

7. The construction No. 213, which declares the collector to have no power to appoint a manager of an estate, attached under Section 26, Regulation V. 1812, has been superseded by Regulation V. 1827, which vests the collector with power to nominate. No. 213, 30th June 1815, ... I. 68

8. A magistrate cannot order the collector to attach an estate: if necessary, he must do it himself. [*Superseded by Section 3, Act IV. 1840.*] No. 414, 17th March 1826, ... I. 174

9. When in the case of property attached to enforce the attendance of a party charged with evading the magistrate's process, the party accused shall appear to answer the charge within the 6 months mentioned in Clause 6, Section 4, Regulation III. 1804, the magistrate is not authorized to continue the attachment. No. 414, 17th March 1826, ... I. 174

10. An European British subject is not eligible to the office of manager of an estate attached under Sections 26 and 27, Regulation V. 1812. No. 449, 30th March 1827, ... I. 189

11. A *zumeendar* is not at liberty to send a *sazawal* of his own authority to attach and collect the rents of the actual cultivators immediately from themselves, without having previously instituted a summary suit under Section 15, Regulation VII. 1799, against the *talookdar* or other intermediate holder between himself and the actual cultivators. No. 456, 17th August 1827, ... I. 192

12. A commissioner of circuit has no authority to attach an estate or to direct the collector to do so. No. 525, 4th September 1829, ... I. 223

13. The above construction does not apply to a magistrate; and the commissioner cannot direct a magistrate to issue orders to a collector to attach lands in conformity with Regulation V. 1827. [Nos. 12 and 13 may be considered as obsolete: the appellate jurisdiction of commissioners of circuit is, for the most part, vested in the session judges; and vide Act IV. 1840.] No. 544, 16th April 1830, ... I. 230

14. The property of a European defendant is liable to attachment in the same manner as that of any other person subject to the jurisdiction of the court, on the court's being satisfied by sufficient proof that the defendant intends to abscond, or withdraw himself, or remove his property, the detention of which is necessary to the satisfaction of eventual judgment; the mere oath of the plaintiff being insufficient. No. 588, 8th April, 1831, ... I. 246

15. Until the proclamation of attachment has been issued in conformity with the above rule, a defendant may legally alienate his property. No. 588, 8th April 1831, ... I. 246

16. Under the powers vested in them by Regulation VIII. 1831, collectors are competent to try all cases of resistance of their process of attachment connected with summary suits, except where actual breaches of the peace occur, in which event the case must be tried by the magistrate. No. 615, 23rd December 1831, ... I. 254

17. The provisions of Section 5, Regulation II. 1806, do not affect the power of attachment to property in the district. The judge may cause the defendant's property to be attached on his inability to give security, wherever the same may be situated. No. 665, 6th January 1832, ... II. 80

18. It is not competent to a judge to attach a portion of a joint undivided estate: he must attach the whole or none No. 717, 21st September 1832, ... II. 56

19. If a defendant abscond or shut himself up in his house, to avoid service of the process taken out against him under Section 4, Regulation II. 1806, his property may be attached to secure execution of the ultimate judgment against him. No. 745, 21st December 1832, ... II. 71

20. Section 23, Regulation XXIII. 1814, not being rescinded, moonsiffs must still apply to the judge before requiring security from defendants, or proceeding to attach their property in default of security in cases still pending. [*Superseded by Section 6, Act VI. 1843.*] No. 772, W. C. 29th March, C. C. 26th April 1833, ... II. 89

21. The same process for holding lands in attachment must be pursued in cases under Section 5, Regulation II. 1806, as when the attachment is made in execution of a decree, i. e. by keeping a chuprassee on the land. No. 916, C. C. 21st November, W. C. 19th December 1834, ... II. 192

22. No person can be compelled against his will to take charge of property distrained, or attached in execution of a decree. If, however, any one should take charge of the property voluntarily, he of course becomes responsible for the faithful discharge of his engagement, and liable to prosecution before the civil court by a regular suit for damages which may have arisen from his failing to do so. No summary proceedings, however, can be instituted against him. Generally the person at whose instance the property is distrained or attached must be considered answerable for the safe custody of it, during the period of distraint or attachment. No. 958, W. C. 19th June, C. C. 17th July 1835, ... II. 216

23. The terms used in the preamble of Regulation V. 1827, being general, include rent-free lands as well as lands paying revenue to Government. Whenever, therefore, it is necessary to attach such lands, it must be done by a precept to the collector. No. 1089, C. C. 19th August, W. C. 16th September 1836, ... II. 276

24. When lands are attached by Government pending an enquiry as to the validity of the alleged rent-free tenure, if the lands be finally adjudged liable to assessment, Government are entitled to the mesne profits during attachment. If on the other hand, the lands be declared to be exempt from public assessment, the proprietors have a just claim against Government for the mesne profits which accrued while the lands were under charge of the revenue authorities. No. 1079, C. C. 10th March 1837,... II. 301

25. The provisions of Section 26, Regulation V. 1812, are not applicable to dependant talooks. No. 1283, C. C. 7th August, W. C. 4th September 1840, ... III. 76

26. A magistrate cannot attach property pending a suit under Act IV. 1840, nor call on collector to do so under Regulation V. 1827, till he has decided the case. No. 1547, C. C. 24th June, W. C. 2d August 1842, ... III. 92

ATTORNEY.

1. A general power of attorney presented to a civil judge to be attested, should not be retained as a record, but returned to the party presenting it. No. 917, W. C. 28th November 1834, C. C. 2d January, 1835, ... II. 192

2. A zillah judge is not required to authenticate an English power of attorney. No. 960, C. C. 19th June 1835, ... II. 218

AUCTION PURCHASER.

1. Should the information furnished to the judge with the collector's requisition to give possession to an auction purchaser, be insufficient to enable him to comply with the requisition, the judge should record the points on which it is defective and his inability to proceed without full and specific information, and send a copy of his proceedings to the collector. [Superseded by Act XII. of 1841.] No. 996, C. C. 2d January, W. C. 29th January 1836, ... II. 241

BA FURZUNDAN.

1. The term "*Ba furzundan*" is considered as conveying an hereditary title to the grantee and his descendants, in the same manner as if the words "*nusulun bad nusulun*" had been used. No. 1103, C. C. 27th October, W. C. 22d September 1837, II. 319

BAIL.

1. The court of circuit should generally direct the magistrate to take bail from persons accused of criminal offences while under trial; though cases may occur which would warrant the court in accepting bail itself." No. 111, 22d October 1812, ... II. 30

2. The surety of a person held to bail, for trial before the court of circuit, failing to produce him, the bail becomes forfeited: but the magistrate should not enforce the penalty until he had procured the permission of the judge holding the sessions. No. 290, 2d April, 1818, ... I. 113

3. When persons committed for trial are admitted to bail, the bail bond is in full force until the trial is concluded, which is not until final sentence is passed: and no person on bail should be committed to jail until a final sentence involving imprisonment may have been passed upon him. No. 805, 11th November 1831, I. 251

4. The commissioner calling for explanation in a criminal case decided by a magistrate, is competent to

direct the prisoner sentenced to be admitted to bail, until a final order shall have been passed by the commissioner. No. 657, 2d September 1831, ... II. 26

5. A magistrate may demand bail from persons charging police officers with extortion, &c. No. 731, W. C. 2d November, C. C. 30th November 1832, II. 63

6. The rules contained in the Circular Order, Nizamut Adawlut, of the 27th April and 30th August 1810, and Construction 734, (see Security for good conduct, No. 15), are equally applicable to the enforcement of bail bonds for personal appearance. No. 1233, W. C. 19th July, C. C. 16th August 1839, ... III. 59

7. Receiving stolen goods is a bailable offence, provided the accused be not also charged with the original theft. No. 1237, W. C. 19th July, C. C. 16th August 1839, ... III. 60

8. Embezzlement is a bailable offence. No. 1238, W. C. 19th July, C. C. 16th August 1839, ... III. 60

BANKRUPTCY.

1. The regulations containing no specific provisions on the subject of bankruptcy, the civil courts, when cases occur, must exercise the discretion vested in them by Section 21, Regulation III. 1793, and Section 17, Regulation II. 1803. No. 716, 21st September 1832, ... II. 56

BATTA.

See "Coinage," Nos. 5, 8.

BEGARS.

1. The provisions of Regulation III. 1820, are restricted to prohibiting compulsory exaction of service of individuals as *porters* or *coolies* in aid of travellers or marching troops. The prohibition extends, first to such service being compelled by travellers or marching troops; and secondly to its being compelled for them by the civil authorities. With the last exception, the rules of Regulation XI. 1806, stand as they were. No. 314, 5th May 1830, ... I. 129

BEGUM SUMROO'S TERRITORIES.

1. The stamp and usury laws are inapplicable to deeds executed within the territories of the *Begum Sumroo*, prior to the date on which they were annexed to the British dominions. In deciding on claims, therefore, in which more than 12 per cent. interest is demanded, the judge will be guided by the laws and usages of the country. Decisions passed by the Begum's officers prior to her demise must be executed by the judge. No. 1064, W. C. 6th January, C.C. 27th January 1837, ... II. 291

BENAMEE PURCHASE.

1. A zillah judge is not competent to attach an estate, the purchase of which, at a sale for public revenue, was made in a fictitious name; he should communicate any information and evidence obtained by him, relative to the illegal purchase, to the collector to enable the latter to make the enquiry and report prescribed by Section 10, Regulation I. 1801. No. 291, 6th May 1818, ... I. 114

BILLS OF EXCHANGE.

See "Stamps II." Nos. 1, 7, 20.

BENARES, RAJAH OF.

1. The native commissioners appointed to try revenue causes in the family *zumeendaree* of the rajah of Benares, may take cognizance of suits for the rent, revenue, or produce of *lakheraj* lands. No. 1224, W. C. 14th June, C. C. 12th July 1839, ... III. 56

BONDS.

1. The fact of two distinct and separate debts due by different individuals being engrossed on a stamp sufficient in value to cover the whole amount, would not vitiate the deed. No. 1087, W. C. 23d March, C. C. 21st April 1837, ... II. 307

See "Stamps II.," No. 8, 19.

BOUNDARY DISPUTES.

See "Dispossession or disputed possession, summary process of criminal courts in cases of," No. 12.

See "Rent-free Lands," No. 24.

BRIBERY.

1. Giving bribes to a public officer is punishable as a misdemeanor. No. 522, 4th September 1829, ... I. 222

2. The provisions of Section 11, Regulation XIII. 1793, being exclusively applicable to the case of a private servant employing his influence with his master in the decision of a suit pending before the court, does not apply to that of a magistrate's private servant receiving money to procure the petitioner an official situation. The magistrate in such cases will use his discretion in disposing of the charge. No. 589, 26th February 1830, ... I. 228

3. The delivery of a bribe being a criminal act, rendering the deliverer liable to prosecution, he cannot be compelled to give evidence on oath touching the bribe alleged to have been administered by himself. No. 757, W. C. 8th February, C. C. 8th March 1833, ... II. 89

4. A magistrate cannot receive a charge of bribery against a *moonsiff* without the permission of the judge. No. 781, C. C. 12th April, W. C. 17th May 1833, ... II. 96

5. A suit to recover from a collector's *serishtedar* a sum of money alleged to have been given as a bribe, must be proceeded on as a common action for debt.

No. 80", C. C. 2d August, W. C. 6th September 1838, ... II. 113

6. Bribery and corruption on the part of ministerial officers in the revenue department is punishable as a misdemeanor. No. 1002, W. C. 4th March, C. C. 25th March 1836, ... II. 249

BUNKUR.

See "Dispossession or disputed possession, summary process in the criminal courts in cases of," No. 21.

BURGLARY.

1. The courts of circuit were warned by this construction to observe the distinction between burglary in a dwelling house and in a warehouse, but this distinction was abolished by Regulation XII. 1818: No. 144, 24th February 1814, ... I. 45

2. The rules contained in Regulation I. 1811, and Regulation XI. 1814, for the punishment of burglary, are to be considered in full force and applicable to all cases of conviction that may come within Clause 5, Section 8, Regulation XVII. 1817. No. 287, 4th February 1818, ... I. 109

3. In cases of simple burglary committed before the promulgation of Regulation XII. 1818, the courts of circuit were directed to complete the trials, giving the prisoners the benefit of the mitigated penalty. No. 298, 26th December 1818, ... I. 119

4. In cases of breaking into houses, &c. punishable by the magistrate, it is immaterial whether it was done by day or night: but the magistrate may consider this circumstance in apportioning the sentence in each case. No. 299, 26th December 1818,... I. 120

5. Clauses 1, 2 and 3, Section 3, Regulation I. 1811, and Clauses 2, 3, 4 and 5, Section 2, Regulation XI. 1814, are considered as virtually superseded by the provisions of Regulation XII. 1818. No. 299, 26th December 1818, ... I. 120

6. If a magistrate commit to the court of circuit a case of burglary, which he is himself competent to dispose of, the judge of circuit should try and decide the case, reporting the magistrate's conduct to the Nizamut Adawlut. No. 301, 29th January 1819, I. 121

7. Any person charged with having committed the offence of burglary while employed in the office of watchman, guard or police officer, against whom there appears sufficient proof, must be committed to the court; the fact of the prisoner's being the *chowkeydar* of a different village being immaterial as regards the commitment, though it would be considered in passing sentence. No. 374, 21st January 1825, ... I. 155

8. Cases of unaggravated burglary or theft cannot be taken up by the police unless the injured party require it by a *written* petition. No. 709, W. C. 27th July, C. C. 24th August 1832, ... II. 51

9. The magistrate must commit for burglary a prisoner formerly convicted of cattle-stealing. No. 1273, C. C. 26th February, W. C. 27th March 1840, ... III. 71

10. Though a police officer cannot make enquiry into unaggravated cases of burglary and theft without a written application from the injured party, yet the magistrate may direct the police officer to make the enquiry whenever he considers it advisable to do so. No. 1354, W. C. 5th August, C. C. 26th August 1842, ... III. 95

BURKUNDAUZ.

See "Neglect of Duty," Nos. 4, 5, 8, 9, 10.

CALCUTTA.

1. Under Regulation I. 1814, a deed of gift drawn on unstamped paper by an attorney in Calcutta for the conveyance of property at Moorshedabad, the donor being at the time a resident of Calcutta, and the donee a resident of Moorshedabad, is not admissible as evidence in the Company's courts. No. 312, 1st April 1820, ... I. 128

2. A suit against A, B, and C, the two former being residents of the district, and the latter a resident of Calcutta, will lie in the zillah court. No. 721, C. C. 5th October, W. C. 9th November 1832, II. 58

3. Decrees of the Calcutta court of requests are to be executed by the judge of the 24-Pergunnahs, in the same manner as other decrees of court, the circumstance of both parties being Europeans making no difference. No. 932, C. C. 6th February 1835, ... II. 201

4. The judge of 24-Pergunnahs may take cognizance of a suit for land, situate beyond the limits of Calcutta, against a resident of Calcutta. No. 991, C. C. 11th December 1835, W. C. 8th January 1836, ... II. 238

CANOONGO.

See "Arbitration," No. 5.

CARRIAGE, SUPPLY OF, FOR TROOPS AND TRAVELLERS.

1. The provisions of Regulation III. 1820, appear to be restricted to prohibiting the compulsory exaction of service of individuals as *porters* or *coolies* in aid of travellers or marching troops: and extends, first, to such service being compelled by the travellers or troops themselves, and secondly, to its being compelled for them by the civil authorities. With this exception the rules of Regulation XI. 1806, stand as they were. No. 314, 5th May 1820, ... I. 129

2. The latter part of Clause 1, Section 3, Regulation XI. 1806, has not been superseded by Regu-

lation VI. 1825, which merely confers additional powers on the revenue authorities, leaving the provisions of the former enactment, in regard to the assistance which police officers are required to render when applied to in such cases, exactly as they were. No. 1049, W. C. 30th September, C. C. 11th November 1836, ... II. 282

3. For troops on the line of march every description of carriage, whether kept for private use or for hire, are liable to be seized; though carriage kept expressly for hire should invariably be taken in the first instance, while that retained for private use should only be pressed in cases of emergency. No. 1049, W. C. 30th September, C. C. 11th November 1836, ... II. 282

4. The carriage to be supplied to officers, not proceeding with or commanding a corps or detachment of troops, or any other person travelling within any part of the Company's territories, either on the public service or his own private affairs, is to be that occasionally let for hire, and not that kept for private use, or exclusively appropriated to the purposes of agriculture. No. 1049, W. C. 30th September, 11th November 1836, ... II. 282

5. The officers of Government cannot seize carriage for the transport of rum, or other supplies required for military purposes, unless the supplies are proceeding with a body of troops, and are required for their use on the line of march; nor can they impress men for the department of public works. No. 1049, W. C. 30th September, C. C. 11th November 1836, ... II. 282

6. Sections 2, 3, and 8, Regulation XI. 1806, apply to troops and travellers commencing their march, as well as to those actually *en route*. No 1188, W. C. 7th December, C. C. 28th December 1838, ... III. 35

7. The police must be left to their discretion as to the mode of compelling bearers, &c. to go with troops and travellers, keeping within the law and leaving parties who consider themselves aggrieved to seek redress in the usual manner, and reporting for the magistrate's orders any instance of refusal of individuals to supply travellers with provisions and other articles at a reasonable rate, or to receive a fair rate of hire for their own services, or those of their carts or bullocks. No. 1188, W. C. 7th December 1838 C. C. 28th December 1838, ... III. 35

CATTLE.

1. The term "cattle" in Regulation XII. 1818, is held to include not only bullocks and buffaloes, but cows, sheep, goats and donkeys. No. 994, W. C. 24th December 1835, C. C. 22d January 1836, II. 240

2. Police officers are not authorized to levy fines on account of cattle trespassing. No. 1176, W. C. 31st August, C. C. 21st September 1838, ... II. 30

CHARGE OF THE OFFICE OF JUDGE, OFFICER IN.

1. The officer in charge of the judge's office may exercise his discretion in postponing a sale, but cannot hold an investigation into the truth of any petition. He may receive a petition of summary appeal, but must leave it for the orders of the judge. He cannot pay any money in deposit, unless under an order passed by the judge before relinquishing charge, or payment be expressly ordered by the Sudder Dewanny Adawlut or other court in execution of whose decree it may have been deposited. No. 998, C. C. 8th January W. C. 15th February 1836, ... II. 243

2. He may stay execution of decrees appealed from, taking security, if necessary, from the party against whom the decree is given. No. 1088, C. C. 19th August, W. C. 16th September 1836, ... II. 276

3. He may summon parties charged with resistance of civil process, and examine witnesses for and against the prosecution, and, if he considers the charge proved, hold the offenders to bail until the arrival of the judge, who, under the provisions of Section 3, Regulation IX. 1799, must pass the final order. No. 1080, C. C, 16th March, W. C. 31st March 1837, ... II. 302

4. He may grant leave of absence to the *vakeels* of the court and the *omlah* of the judge's establishment. No. 1242, W. C. 16th August, C. C. 20th September 1839, ... II. 61

CHILDREN.

See "Illegitimate Children," *passim*.
"Maintenance of Wives and Children," *passim*.

CHINSURAH.

Constructions Nos. 168, 177 and 441, regarding Chinsurah, are now obsolete; that town being included in the zillah of Hooghly. No 168, 13th July 1814, I. 52
No. 177, 3d Aug. 1814, I. 55
No. 441, 29th Dec. 1826, I. 185

CHOONGEE.

1. *Zumeendars* cannot be prohibited by the magistrate from levying *choongee* in markets held within the precincts of their estates. No, 973, W. C. 7th August, C. C. 25th September 1835, ... II. 224

CHOWDREES.

1. Magistrates are competent to remove *chowdrees* of trades and professions. No. 816, W. C. 23d August, C. C. 27th September 1833, ... II. 119

CHOWKEYDAREE TAX.

1. The duties of *chowkeydaree bukshee* are fully described in the *sunnud* granted to him by Section 16,

Regulation XII. 1813, and he must be restrained from acts not expressly authorised by the Regulations. No. 215, 6th July 1815, ... I. 69

2. Under Regulation XXII. 1816, no individual can be assessed in the same town or city at a higher sum for chowkeydares assessment than one rupee per month. [*Rescued to 2 rupees by Section 2, Act XV.* 1837.] No. 304, 6th August 1819, ... I. 128

3. European British subjects are not subject to *chowkeydares* assessment [*Superseded by Section 3, Act XV.* 1837, *which declares all persons liable.*] No. 411, 23d December 1825, ... II. 172

4 The Circular Order of 22d July 1831, was merely intended to prevent the extension of the provisions of Regulation XXII. 1816, to places not contemplated in that Regulation, and not to interfere with the establishments of *chowkeydars* which the *zumeendars* are bound to support by Section 21, Regulation XX. 1817. No. 608, 16th November 1831, ... I. 252

5. The assessment of villagers for the support of a village police establishment of *chowkeydars* is sanctioned by no Regulation, and is consequently illegal. No. 655, 26th August 1831, ... II. 17

CIVIL JAILS AND PRISONERS.

1. The subsistence money of prisoners confined under civil process is payable by the party at whose instance they are confined No. 21, 25th June 1806, I. 6

2. The judge is competent to settle the amount of subsistence money of defaulters confined at the suit of the collector No. 77, 31st January 1811,... I. 18

3. If a civil prisoner, sentenced to a reduction of his allowance for two months for breach of the prison rules, satisfy his creditor, with a view to obtain his release, the magistrate cannot commute the punishment so awarded to fine and imprisonment; but the prisoner, on payment of the demand against him, must be immediately released. No. 426, 14th July 1826, ... I. 179

4. The magistrate being responsible for the safe custody of the *dewanny* as well as the *foujdaree* prisoners, the appointment and removal of native officers attached to both jails are vested exclusively in him. No. 442, 29th December 1826, ... I. 187

5. A person sentenced to imprisonment by the collector, in a case of illicit opium, made his escape, but was re-apprehended. Held that as his offence amounted to an "attempt to escape," he should be dealt with under Section 4, Regulation III. 1826. No. 486, 15th August 1828, ... I. 206

6. *Dewanny* prisoners are not liable to punishment for escaping from jail. [*Doubtful, See No. 9 infra, and Reg. III.* 1826.] No. 545, 16th April 1830, ... I. 231

7. Prisoners confined under civil process may petition on plain paper, only in matters relating to their treatment in jail. No. 553, 28th May 1830, I. 233

8. Section 2, Regulation VI. 1830, does not preclude the issue of a *dustuck* under Regulation VII. 1799, until subsistence money for thirty days is deposited: but no defaulter can be committed to jail till the deposit be made. No. 575, 24th September 1830, I. 241

9. A civil prisoner cannot be confined in fetters unless he be suffering under a criminal sentence for having broken jail: in other words, fetters cannot be imposed on a civil prisoner merely to ensure his safe custody. No 624, 25th February 1831, ... II. 4

10. The provisions of Reg. VI. 1830, regarding the deposit of subsistence money of persons confined in civil jails, apply to the officers of Government, as well as to private individuals. No. 647, 15th July 1831, ... II. 14

11. The provisions of Clause 1, Section 15, Regulation X. 1818, which specially require the judge to pass orders for the confinement of revenue defaulters, are not affected by Circular Order, 4th January 1833, which relates merely to the cases of prisoners confined under collector's decree under Regulation VIII. 1831. No. 892, C. C. 25th July, W. C. 22d August 1834, ... II. 177

12. It is not competent to a judge to release a civil prisoner, solely on the ground of illness, without the consent of the party at whose instance he was confined. No. 1114, W. C. 24th November, C. C. 9th December 1837, ... II. 328

13. The judge has no right to be considered as the medium of communication on the part of the magistrate with the civil prisoners: nor can the magistrate constitute his office the channel of communication between the judge or collector in regard to prisoners confined under their process. No. 1021, W. and C. C. 8th July 1836, ... II. 263

14. A person having been arrested and released after having been in the custody of the nazir's peons for seven days, in consequence of the plaintiff's not paying his subsistence money; held that as he was not confined in jail, he is still liable to arrest and confinement. No. 1090, C. C. 19th May, W. C. 2d June 1837, ... II. 308

CLAIMS TO PROPERTY ATTACHED IN EXECUTION OF DECREES.

1. Parties in actual possession, claiming property sold in execution of decrees against another person, cannot be summarily dispossessed. No. 10, 18th September 1805, ... I. 3

2. Claims to property attached in execution of decrees are exclusively cognizable by the court ordering the sale: and when such claims are preferred to the collector, he is not to investigate them; *but merely to report them to the court, staying his proceedings till the court's orders are received.* [*The words in italics cancelled by C. O. S. D. A., 4th Sept.* 1840.] No. 794, W. C. 12th June, C. C. 5th July 1833, ... II. 104

3. The expression "objections made to the sale of property within the period of the proclamation" in the Circular Orders of Sudder Dewanny Adawlut, of the 19th July 1833, apply to defendants objecting to the sale of their own property, as to other individuals claiming the property advertised. No. 844, W. C. 22d November, C. C. 6th December 1833, ... II. 142

CLAIMS TO PROPERTY ATTACHED OR SOLD FOR PUBLIC ARREARS.

1. A suit instituted under Clause 4, Section 28, Regulation XI. 1822, by a third party claiming an interest in land sold for arrears of public revenue, must be regular and not summary. No 469, 8th February 1828, ... I 198

2. The judge having been moved by the collector to put B, auction purchaser of the estate of A, sold by public auction, in possession of a portion thereof claimed by C, was told to exercise his discretion in regard to the claim of C, leaving the party dissatisfied to appeal summarily to the provincial court. [*See Cir. Or. Sudder Dewanny Adawlut, 1st Novr.* 1839]: No. 469, 8th February 1828, ... I 198

* * Both these constructions superseded by Act XII. 1841.

CLAIMS TO PROPERTY IN SUITS IN MOONSIFFS' COURTS.

1. Petitions of persons preferring claims to property sued for in the courts of the moonsiffs, under Clause 4, section 6, Regulation V. 1831, are to be written on plain paper. The clause cited applies only to moonsiffs' courts; the course to be pursued in such cases in the zillah and city courts, remaining as it stood before the enactment of Regulation V. 1831 No 706, C. C. 20th July. W. C. 17th August 1832, ... II. 50

CLANDESTINE MARRIAGE.

See "Marriage," No. 2.

COINAGE.

1. Rupees deficient in weight in a greater proportion than 6 annas per cent. are not to be received as standard weight, but as light rupees under Section 4, Regulation LXI. 1795. Those which have not lost weight in a greater proportion than 6 annas per cent. must be received without deduction of batta. No. 294, 20th August 1818, ... I. 117

2. A magistrate cannot punish, for having in his possession counterfeit coin, a person who has been tried by the court of circuit, and acquitted of the charge of uttering counterfeit coin with intent to defraud. No. 362, 26th March 1824, ... I 150

3. Selling counterfeit gold-mohurs, much defaced, as bullion, knowing the same to be counterfeit, (though unquestionably a fraud and punishable under the general regulations and the provisions of Mahomedan law,) cannot be considered to be "paying or tendering in payment, counterfeit coin," under the provisions of Clause 1, Section 10, Regulation XVII. 1817. No. 464, 30th November 1827, ... I. 197

4. Melting down gold and silver coin for the purpose of making ornaments of the metal, is not punishable under the provisions of Clause 3, Section 10, Regulation XVII. 1817. No. 559, 11th June 1830, ... I. 235

5. A magistrate has no power to interfere to regulate the exchange of copper for silver. No. 731, 4th January 1833, ... II. 76

6. The sicca rupee must be taken as the standard for estimating the powers of the native judges in the investigation of suits, until altered by an Act of Government. (*See Cir. Or. Sudder Dewanny Adawlut, 15th April* 1842.) No. 1068, C. C 20th January, W. C. 3d February 1837, ... II. 294

7. In a suit for *value*, and not for *specific coins*, when the account is in siccas, they are to be converted into Company's rupees by adding thereto 6-10-8 per cent. If for *specific coins*, (as where a man may covenant for the delivery of so many coins of the sicca currency, or so many dollars,) the payment must be in the coin covenanted. No. 1151, 27th April 1838, ... III. 15

8. A magistrate cannot punish by fine and imprisonment *mahajons* or *shroffs*, who are in the habit of demanding illegal batta on Company's rupees. No. 1156, C. and W. C., 29th June 1838, ... III. 17

COLLECTORS.

1. The Court determined that claimants in possession of certain property sold by the collector in execution of a decree against another person, cannot be summarily dispossessed, merely because the lands had been specified in the collector's proclamation as belonging to that other person. No. 10, 13th September 1805, ... I. 3

2. Applications by collectors to the civil courts must be written on stampt paper. [*Superseded by Section* 21, *Regulation XXVI.* 1814.] No. 188, 17th September 1814, ... I. 58

3. The collector, or other public officer in charge of the *abcaree* mehal, is competent to administer an oath in cases coming within the provisions of Section 22, Regulation X. 1813. No. 252, 15th June 1816, ... I. 86

4. On the application of a collector to the civil court for the confinement of a defaulting *tahseeldar*, or other native officer, the courts cannot proceed in any other manner than according to Sections 16 and 19, Regulation III. 1794, i. e. on the defaulter's denying the justness of the whole or part of the demand, and furnishing security to institute a suit against the collector in fifteen days to contest the demand, and pay what may be adjudged due, the court will release the defaulter; and the security having been given,

the suit must be instituted and proceeded upon as a regular suit. No. 282, 29th December 1817, .., I. 103

5. The sillah judge cannot attach lands, as purchased at a collector's sale in a *fictitious* name, but should communicate all the information and evidence obtained by him relative to the illegal sale to the collector, for the purpose of enabling the latter to make the enquiry and report required by Section 10, Regulation I. 1801. No. 291, 6th May 1818, ... I. 114

6. The process described in Section 11, Regulation XXVII. 1803, for confining the person of a revenue defaulter at the instance of the collector, may be had recourse to on account of all arrears of revenue of whatever standing, and cannot be considered as limited to the balances arising within a period not exceeding a year. No. 316, 26th May 1820, ... I. 129

7. The process also described in Section 14, Regulation XXVII. 1803, for realizing the balance by attachment and sale of the defaulter's property may be resorted to for balances of whatever standing. No. 316, 2d June 1820, ... I. 130

8. But the summary process under Section 17, Regulation XXVIII. 1803, for levying penalties for resistance of attachment, which involves the adjudication of a penalty by the civil court, is limited in point of time by Section 6, Regulation II 1806, to one year from the occurrence of the act which gave rise to the proceeding: unless Government being the party suing, (which is virtually is, in the person of the collector,) there be good cause shewn for the delay. No 316, 2d June 1820, ... I. 130

9. A collector cannot decline a suit sent to him for report under Section 30, Regulation II 1819, on the ground of the plaintiff being a public officer of his establishment. No 320, 28th July 1820, ... I. 132

10. A suit instituted by the *malgoozar*, sent to the civil jail for confinement for default, to contest the collector's demand against him, must be received and tried as a regular suit. No. 330, 17th November 1820, ... I. 135

11. When the alleged defaulter has given security and instituted a suit to try the justness of the arrears of revenue demanded from him, the civil court *may direct the collector not to sell his real property*, [*But see Cons. 853, No 21,*] but the collector may attach and sell his personal property. No. 333, 29th December 1820, ... I. 136

12. The sale of *puttnee* and *durputtee* tenures in execution of decrees must be conducted by the collector, and the report required by Section 2, Regulation XLV. 1793, made to the commissioner. No. 349, 26th April 1822, ... I. 144

No. 897, 5th September 1824, ... II. 182

13. A magistrate cannot fine a collector for disobeying his orders: the rule in Section 36, Regulation XIV. 1793, being restricted in its operation to decrees and orders of a civil court of judicature. No. 364, 23d April 1824, ... I 151

No 414, 17th March 1826, ... I. 174

14. Claims for the rent of rent-free lands are summarily cognizable by the collector equally with those for the rent of land paying revenue to Government. No. 599, 12th August 1831, ... I 249

15. Section 8, Regulation IV, 1821, authorizes the collector to delegate to his assistant his fiscal duties only: and has no reference to the judicial duties delegated to the collector by the judge under Regulations II. 1819, XIV. 1820, or any other regulations; nor to the duties of magistrate vested in a collector, the delegation of which latter to an assistant would in some cases be contrary to Regulations IX. 1807, III. 1821, and I. 1822. No. 603, 21st October 1831, ... I 250

16. Collectors are competent under the powers vested in them by Regulation VIII. 1831, to try cases of resistance of process connected with summary suits for rent. No. 615, 23d December 1831, ... I. 254

17. Collectors are empowered and authorized to execute their summary awards under Regulation VIII. 1831. No. 677, 24th February 1832, ... II 34

18. The revenue authorities cannot demand that the records of the civil courts be sent to them for inspection No. 693, 18th May 1832, ... II. 43

19 The sillah judge is not competent to stay the execution of a summary award for rent, passed by a collector, pending a regular suit instituted to set aside that award. No 738, W. C 16th November, C. C. 7th December 1832, ... II 68

20. It is competent to a collector to release a person confined under a summary decree for rent, on proof of insolvency No. 784, C. C. 19th April, W. C. 17th May 1833, ... II. 97

21. The sillah judge cannot stay the sale of the real property of a defaulting *malgoozar*, pending the investigation of a suit instituted to dispute the demand, on a petition being filed previous to the advertisement of the defaulter's lands for sale, and on good security having been furnished to fulfil the award of the court. No. 853, W. C. 27th December 1833, C. C. 17th January 1834, ... II. 146

22. A suit instituted in the sillah court or before the *moonsiff* by a *ryot*, to obtain a reversal of the summary decision of the collector, adjudging a balance against him and ejecting him as a defaulter, must be laid at the amount in dispute, or the sum sued for in the first instance No. 862, W. C. 7th February, C. C 28th February 1834, ... II. 156

23. A collector cannot refer a summary suit to a moonsiff to be tried as a regular suit. No. 879, C. C. 11th April, W. C 2d May 1834, ... II. 168

24. The provisions of Clause 1, Section 5, Regulation X. 1818, which specially require the judge to pass orders for the confinement of defaulters in the cases therein alluded to, are not affected by the Cir. Qr. Sudder Dewanny Adawlut, of the 4th January 1833, which declare the collector's warrant to be sufficient authority to the civil jailor to receive or discharge prisoners confined under his orders in execution of his summary decrees. No. 892, C. C. 25th July, W. C. 22d August 1834, ... II. 177

25. The decisions of *punchayats* under Regulation IX. 1833, should be enforced by the revenue authorities, the judicial functionaries having no power to carry them into effect. No. 895, W. C. 5th September, C. C. 26th September 1834, ... II 179

26 A collector cannot, without application to the judge, issue a *perwannah* to a mooteah to sell personal property and houses attached by his nadir for arrears of public revenue. No. 918, C. C. 28th November, W. C. 26th December 1834, ... II. 193

Nos. 989, C. C 28th November, W. C. 26th December 1835, ... II. 237

27. Summary suits by *malgoozars* against *putwarees* and other native agents employed by them in the management of their estates, under Section 37, Regulation XXVIII. 1803, are now, under Regulation VIII. 1831, cognizable by the revenue authorities. No. 946, W. C. 24th April, C. C. 22d May 1835, ... II. 208

28. The civil courts are competent to issue precepts to the collector, enjoining him to carry their orders into effect, and to return the precept duly executed within a certain period, or to shew good and sufficient cause for the delay. No. 968, W. C. 31st July, C. C. 21st August 1835, ... II. 222

29. When the civil court is called upon by the collector to put an auction purchaser in possession, if the information given be not sufficiently full, the court should inform the collector wherein it is defective and require further information [*Superseded by Act XII.* 1841.] No. 996, C. C. 2d January, W. C. 29th January 1836, ... II. 241

30. A collector cannot exercise any judicial authority in cases of disputed succession to the estate of a deceased *zumeendar*. His duty is confined, on hearing that any person has succeeded by inheritance to the property of a *malgoozaree* estate or *lakheraj* tenure, to institute such enquiry as may appear necessary to ascertain the truth of the alleged succession, and, if the same appear to have taken place, to make the necessary entries in the proper registers. No. 1008, W. C. 19th May, C. C. 17th June 1836, ... II. 252

31. A collector or officer exercising the power of collector has no authority to issue orders to the police, to aid in the execution of his process under the provisions of Clause 3, Section 24, Regulation VII. 1822, except in very emergent cases, which should also be immediately reported to the magistrate. In ordinary cases, where the collector may have reason to apprehend resistance of his process, he should communicate his apprehensions to the police daroghs, who will be responsible for taking such precautionary measures, as may, in his opinion, be necessary to prevent a breach of the peace. No. 1018, W. C. 15th July, C. C. 24th July 1836, ... II. 262

32. The terms of the preamble of Regulation V. 1827, being general, include rent-free lands, as well as lands paying revenue to Government. The attachment, therefore, of rent-free lands should be made through the collector. No. 1039, C. C. 19th August, W. C. 16th September 1836, ... II. 276

33. In suits in which the collector has been improperly made a defendant, the judge, on the case being brought to a hearing under Section 10, Regulation XXVI. 1814, should point out to the plaintiff or his vakeel that he has rendered himself liable to nonsuit, by improperly making the collector, in his official capacity, a defendant: if the plaintiff plead that he has done so through inadvertence, and if it appear to the court that the act was not wilful nor proceeded from any fraudulent or improper motive, the plaintiff may be allowed to file a supplementary plaint withdrawing his claim against the collector as a Government officer, after which the suit will proceed in the usual manner against the other defendants. No. 1075, W. C. 13th January, C. C. 21st February 1837, ... II. 298

34. If the collector, on being required by the judge, under Section 15, Regulation VIII 1831, to transfer the record of a case pending before him, refuse to do so, the judge is competent to proceed according to Section 36, Regulation XIV. 1793. No. 1094, C. C. 23d June, W. C. 14th August 1837. ... II. 311

35. As Section 22, Regulation XII. 1817, does not invest revenue officers with power to examine parties on oath in regard to pensions referred to in Regulation XXIV. 1803, it was held that a prosecution for perjury could not be maintained against a party charged with having in such a case falsely deposed on an oath administered by a collector. No. 1106, W. C. 6th September, C. C. 6th October 1837, ... II. 322

36. Should the collector deem the orders issued to him by a civil court illegal, he should nevertheless comply with them, appealing to the superior authority. No. 1110, C. C. 20th August, Government of Bengal, 21st November 1837, ... II. 325

37. It is not competent to a revenue officer engaged in making settlements under the provisions of Regulation IX. 1833, or any other enactment, to interfere in regard to any case pending before any court of judicature at the date of the settlement, either as an original suit, or in appeal; unless the parties themselves apply by petition for the removal of their cause to the court of the settlement officer, with a view to its being decided under the provisions of Sections 5 to 8, Regulation IX. 1833. No. 1128, C. and W. C. 5th February 1838, ... III. 2

38. It is not competent to such officer to interfere under the provisions of the regulation cited, in regard to any case which may have been already judicially decided by a court of civil judicature, either as an original suit or in appeal, unless such interference took place by order of the court or with the consent of the parties. No. 1128, W. C. 5th February 1838, II. 2

39. No case can be tried by a revenue officer in which the cause of action may have arisen more than one year previous to the complaint, and then, only such cases can be taken up by them as regards the extent of interest of parties in possession, and the

decision of which is necessary to the due allotment of the Government jumma, leaving all old and extraneous claims to the decision of the courts. No. 1128, C. and W. C. 5th February 1838, ... III. 2

40. The civil courts cannot summarily interfere with the proceedings of the collectors in regard to the attachment of the property of a ryot in execution of a summary award, or for the realization of the Government revenue. No. 1165, W. C. 20th July, C. C. 17th August 1838, ... III. 23

41. It is competent to a civil court to stay the sale of property about to be sold in execution of the collector's summary award, on the motion of a third party who, claiming it, has instituted a regular suit to establish his claim. No. 1181, C. and W. C. 26th October 1838, ... III. 32

42. When the collector has been improperly sued in his official capacity, the usual notice must be served upon him, and he must appear and defend the suit, or take the consequence of its being allowed to be tried *exparte*. If he appear and the case be nonsuited, the court should direct the payment of the fee of the Government pleader by the collector on the part of Government, leaving him to recover the amount in the usual manner from the party declared liable to the same. No. 1192, W. C. 21st December 1838, C. C. 18th January 1839, ... II. 40

43. It is considered objectionable to allow the native judges to impose fines on collectors for not conforming to their orders. When their orders are not carried into effect, they should report the circumstances of the case to the judge, leaving him to take such steps in the matter, as he may deem proper, consistently with the Regulations. No. 1193, W. and C. C. 21st December 1838, ... III. 40

44. Section 12, Regulation XLV. 1793, regarding the adjustment by the revenue authorities of the *jumma* of land about to be sold in execution of decrees is applicable only to portions of estates paying revenue direct to Government, and not to *Shikustee* or dependant talooks, the rent of which, payable to the zumeendar, may be disputed between him and the proprietor of the talook. No. 1194, C. and W. C. 28th December 1838, ... III. 41

45. A bidder at a public sale who has been fined by a collector, cannot institute a suit against that officer in the civil court to obtain a refund of the fine. No. 1201, C. C. 15th February, W. C. 8th March 1839, ... III. 44

46. There is nothing in the law as it now stands to warrant the imposition, on the first purchaser of a permanently assessed estate sold for arrears of revenue, who may fail to fulfil the conditions of sale, of any other penalty than the annulment of such sale, and the forfeiture of the amount paid. [*But see Act XX. of 1840, and subsequent rule in Section 16. Act XII. 1841, the new sale law.*] No. 1222, W. C. 3d June, C. C. 6th July 1839, ... III. 55

47. Should it appear to the judge in pending before him, under Regulation II. 1819, that the collector has omitted to perform any acthe is required by law to do, and has either forwarded his report according to Clause 6, Section 30, or passed a decision under Clause 7, without such defect being remedied, it is competent to and the duty of the judge to point out to the collector his want of conformity to the law applicable to the case, desiring him to rectify the error, and, on his refusal, bring his conduct to the notice of Government. No. 1245, C. C. 23d August, W. C. 13th September 1839, ... III. 63

48. The Courts of Sudder Dewanny Adawlut are not included in the rules contained in Sections 14 and 15, Regulation VIII. 1831, [which require the civil courts and the collectors to transfer pending cases to each other,] as they refer exclusively to the zillah and city courts, and to the courts subordinate to them. No. 1252, C. C. 27th September, W. C. 31st October 1839, ... III. 65

49. Held that Government are competent under Section 3, Regulation IX. 1825, to authorize the revenue authorities, though not employed in revising settlements, to perform all the acts described in Sections 11, 12, 14, and 16 to 35, Regulation VII. 1822, in any specified tract within the provinces of Bengal, Behar, Orissa and Benares, in the summary adjudication of suits between individuals;—that the provisions of Regulation IX. 1833, are applicable to adjudications in such parts, made in conformity with those provisions;—and that therefore the collector is competent to adjudge claims connected with disputed boundaries in those tracts. No. 1369, W. C. 27th January, C. C. 10th February 1843, ... III. 101

50. The jurisdiction of the civil courts is only barred by the provisions of Regulation IX. 1833, when the proceedings of the collector or other officer, engaged in making settlements, are in conformity with the rules prescribed in the enactment: and when a suit, brought to set aside the decisions passed and adjustments made by the revenue authorities acting under the law quoted, is deemed admissible, it must be tried and decided, not with reference to the collector's proceedings, but on the merits of the plaintiff's claim. No. 1371, W. C. 7th November 1842, C. C. 17th March 1843, ... III. 101

COMMISSION ON THE RECOVERY OF STOLEN PROPERTY.

1. The provisions of Clause 17, Section 16, Regulation XX. 1817, are applicable to the recovery by a police officer of treasure plundered by robbers: but their operation does not extend to other individuals not being police officers, though they may be rewarded for meritorious services, the sanction of such reward being previously obtained by the magistrate from the proper authority. No. 381, 22d April 1825, ... I. 158

2. A kotwal finding 26,000 rupees while searching certain houses, is not entitled to the percentage under Clause 17, Section 16, Regulation XX. 1817, but the magistrate may apply to the superintendent of police to sanction the grant of a reward to him. No. 511, 19th June 1829, ... I. 217

3. A session judge is competent to order the payment to police officers of the commission on the value of stolen property recovered by them. No. 1136, C. C. 9th March 1838, ... III. 7

COMMISSION ON THE SALE OF PROPERTY.

See "Moonsiff's VI." Nos. 3,4.
See "Nazir." Nos. 3,5.

COMMITMENTS.

1. The courts of circuit at large are empowered by the regulations to annul commitments made by the magistrate. No 114, 26th November 1812, ... I. 33

2. Prisoners committed by joint magistrates not residing at the sudder station, should be forwarded to the sudder station, and brought to trial at the regular sessions of the district, in like manner with prisoners included in the commitments by the magistrate. [*This Construction was superseded by the provisions of Regulation XVII.* 1825, *but the same rule has been re-enacted by Section* 12, *Regulation VII.* 1831.] No. 135, 19th August 1813, ... I. 39

3. Should a magistrate through error or negligence have committed a case of burglary which he is himself competent to dispose of, the judge of circuit should try the case, reporting the conduct of the magistrate for the orders of the Nizamut Adawlut. No. 301, 29th January 1819, ... I. 121

4. Whenever the commitment of one prisoner may be requisite under the regulations, all others implicated in the same offence should likewise be committed. No. 379, 8th April 1825,..... I. 157
No. 622, 28th January 1831,..... II. 3

5. In cases of wounding, the commitment should not be made till the result is known by the death or recovery of the wounded person. No. 558, 3d June 1830, ... I. 235

6. The Constructions Nos. 623 and 628 which declare that a magistrate must commit all cases of affray attended with *sword wounding*, have been superseded by Circular Order, 12th June 1840. No. 623, 4th February 1831,..... II. 3
No. 628, 4th March 1833,..... II. 7

7. A session judge having in his capacity of magistrate committed several prisoners in a case, was informed that he should not try another prisoner implicated in the same case subsequently apprehended and committed by another officer. Nos. 685 and 686, 15th and 27th April 1832,..... II. 39

8. A session judge cannot try a commitment made by himself in his capacity of civil judge. No. 691 W. C. 11th May, C. C. 1st June 1832,..... II. 42

9. A civil judge is not competent to commit a person charged with embezzlement or other crimes than perjury or forgery. If grounds appear for a criminal trial, he should forward the proceedings to the magistrate, who will, however, act according to his own judgment in committing or releasing the accused. No. 691, W. C. 11th May, C. C. 1st June 1832, ... II. 23
No. 975, C. and W. C. 7th August 1835,... II. 227

10. A magistrate cannot originate a prosecution for forgery of a document filed in the civil court. No. 704, 13th July 1832, ... II. 49

11. The Court approved of the annulment by the commissioner of a commitment in a case which the magistrate had power to dispose of. No. 782, 12th April 1833,..... II. 96

12. A session judge may annul a commitment and direct the magistrate to recommit the prisoners on such charge as may appear to him proper. No. 857, 24th January 1834,..... II. 149

*** The Western Court still act upon this construction. The Calcutta Court hold that since the enactment of Act XXXI. of 1841, the session judge cannot order the commitment of a person released by the magistrate or direct that one committed by the magistrate be re-committed upon a higher charge.

13. A magistrate, after he has committed a prisoner for trial, cannot legally quash the commitment, release one or more prisoners, and make him or them witnesses for the prosecution on the same trial. No. 857, 24th January 1834,..... II. 149

14. An order for commitment made by a joint magistrate residing at the sudder station without independent authority, is not liable to reversal by the magistrate of the district. No. 906, W. C. 10th October, C. C. 24th October 1834, ... II. 185

15. A joint magistrate without independent jurisdiction is competent under para. 6 of the resolution of Government dated 1st November 1831, (unless he has been expressly interdicted by the magistrate,) to commit prisoners for trial to the sessions court, and it is not necessary for the magistrate to revise his commitments. No. 911, C. C. 17th October 1834, II. 187

16. In a case of fraudulently filing a petition in the civil court, the civil judge cannot commit for trial, but should refer the case to the magistrate who will commit or not as may appear to him advisable. No. 925, W. C. 9th January, C. C. 27th March 1835, II. 197

17. The declaration on oath of the owner of stolen property is sufficient, in the first instance, to fix the value of the property and determine whether the case of theft or burglary should be committed to the sessions court or disposed of by the magistrate. No. 1030, C. C. 29th July, W. C. 2d September 1836, II. 270

18. The commissioner having annulled a commitment because he did not consider the theft proved,

was told he should have either acquitted the prisoner, or, if he thought the charge susceptible of further proof, have directed the magistrate to supply the defect. No. 1030, C. C. 29th July, W. C. 2d September 1836,..... II. 270

19. On a charge of misdemeanor against a moonsiff, if the judge see reason to believe it is well founded, he should make the case over to the magistrate to be disposed of according to law, directing the Government pleader to prosecute. No. 1069, C. and W. C. 27th January 1837,..... II. 295

20. A session judge is not competent to cancel a commitment merely on the ground of the evidence shewn in the calendar appearing insufficient for conviction. No. 1122, C. C. 29th December 1837, W. C. 19th January 1838,..... II. 334

21. The civil judge sent to the magistrate a case of forgery and fraud and subornation of the same, for filing or causing to be filed a *soolehnameh*, with instructions to commit if he deemed the evidence sufficient—the magistrate did commit. The session judge was informed that the course followed by him was the correct one, and that he was competent as session judge to enter upon the trial. No. 1221, W. C. 31st May, C. C. 5th July 1839, ... III. 54

22. A civil judge cannot commit any party in a civil suit, or other person for fraud; he must refer the case to the magistrate, who will investigate the charge and dispose of it himself; or, if committable, commit it, at his discretion, for trial at the sessions. No. 1225, W. C. 14th June, C. C. 12th July 1839, III. 56

23. A magistrate must commit for burglary a prisoner previously convicted of cattle-stealing; but not for cattle-stealing one before convicted of that offence. No. 1273, C. C. 28th February, W. C. 27th March 1840,..... III. 71

COMPANY'S INVESTMENT.

1. The judge of Etawah was informed that if saltpetre be an article of the Company's investment in the district of Etawah, the principle of the rules contained in Regulation XXXVII. 1803, are by Section 14, applicable to manufacturers and other persons employed in the provision of it. No. 240, 17th February 1816,..... I. 80

2. If the *peons* employed under Clause 5, Section 3, Regulation XXXVII. 1803, be *not* in the receipt of a salary from Government, the *tulabana* payable to them is recoverable from any person failing in his engagement for the delivery of any article of the Company's investment; and, if not paid on demand, may be debited to the defaulter by the commercial residents, and deducted from any sum due to him. It cannot be summarily levied from him, but recourse must be had to a regular suit to enforce payment thereof. No. 267, 26th February 1817, ... I. 94

*** Both these constructions superseded. See Reg. IX. of 1829.

COMPLAINTS AGAINST PUBLIC OFFICERS.

See "Public Officers, complaints against," *passim*.

COMPROMISE OF THEFT.

1. Notwithstanding a private compromise of theft, the magistrate may, if he think proper, direct a public prosecution. No. 318, 7th July 1820,..... I. 131

2. A civil court cannot take cognizance of a suit when a theft has been compromised between the owner of the stolen property and the thief, to compel the restitution of the value taken, should the thief fail to pay it under the terms of the compromise. No. 318, 7th July 1820,..... I. 131

CONDUCT OF TRIALS.

1. The judge of circuit must complete all trials before leaving the station, but may pass sentence at a different station in a trial which he has erroneously referred to the Nizamut Adawlut, which may be returned to him for that purpose. [*Obsolete in consequence of the abolition of the courts of circuit.*] No. 102, 19th May 1812, ... I. 27

2. In cases committed, the accused should generally be required to attend before the circuit court in person: but cases may arise in which personal attendance may be dispensed with. In the event of a doubt on this point, the question should be referred to the law officer under Section 54, Regulation IX. 1793. If the law officer declare the accused warranted by the Mahommedan law, in his application to have his personal attendance dispensed with, the judge will proceed with the trial. On the other hand, if he declare the accused not entitled to the indulgence, or that the determination of the point rested with the judge, the judge would be competent to admit or reject the application as might be deemed just and consistent with proper principle. No. 137, 11th November 1813, I. 40

3. The judge of circuit having referred a trial for dacoity, wounding, and arson, without giving, in his letter or in the proceedings, a clear and explicit opinion as to the guilt or innocence of the prisoner, the case was sent back to him to supply the omission. No. 222, 14th September 1815,..... I. 72

4. The circuit judge concurring with his law officer in convicting four prisoners, but differing from the acquittal of the fifth, should pass sentence on the four, postponing the issue of sentence till the receipt of the Court's order on the trial of the fifth. No. 484, 6th June 1828, ... I. 205

5. A *futwa* convicting on *zun-i-ghalib* or *shubah-i-cuwee*, (violent presumption,) is a *futwa* of conviction: and the commissioner concurring in such conviction in a case of burglary or theft attended with murder, or wounding or corporal injury endangering life, must pass sentence of 39 stripes and imprisonment in transportation for life, and refer the trial to the

Nizamut Adawlut, suspending the issue of his sentence. No. 558, 3d June, 1831, ... I. 235

6. A commissioner having passed sentence cannot alter it; he must refer the case to the Nizamut Adawlut. Nos. 629 and 643, 4th March and 17th June 1831, ... II. 7 & 13

7. Though the prisoner plead "guilty," the trial should proceed in the ordinary course. No. 650, 22d July 1831, ... II. 15

8. A difference of opinion between the presiding officer and the jurors or assessors does not render a reference to the Nizamut Adawlut necessary. No. 783, W. C. 25th March, C. C. 12th April 1833, II. 96

9. A trial having been commenced with the aid of the law officer, the judge cannot call in the aid of a punchayut. No. 835, C. C. 4th October, W. C. 15th November 1833, ... II. 131

10. In the event of a prisoner committed on two counts being convicted on only one count by the session judge, and only on the other by the law officer, the session judge is not competent to pass sentence, but must refer the trial to the Nizamut Adawlut. No. 971, W. C. 7th August, C. C. 28th August 1835, II. 223

11. When a prisoner is committed in several cases, the session judge should try the whole or a sufficient number of them until, on consideration of the several acts established against prisoner, the session judge be of opinion that the punishment of 14 years' imprisonment prescribed in Clause 3, Section 2, Regulation XV. 1814, is sufficient and adequate to the crimes charged, and that no reason therefore exists for trying the remainder. No. 1011, W. C. 10th June, C. C. 1st July 1836, ... II. 258

12. When prisoners have been tried under false names, on the real name being discovered, the judge should designate them in the warrant by the name under which they were arraigned and pleaded, adding their since discovered real names by an *alias*. No. 1034, C. C. 12th August, W. C. 2d September 1836, ... II. 273

13. The conviction of a prisoner resting principally on the evidence of two females, whose testimony the law officer holds insufficient for conviction, the judge, differing, must refer the trial. No. 1045, C. C. 9th September, W. C. 23d September 1836, II. 279

14. A session judge cannot, except in cases regularly committed, receive evidence which has not been previously heard before the magistrate. If he deem further evidence necessary, he should direct the magistrate to take it, and communicate to him the result. No. 1104, C. and W. C. 1st September 1837, ... II. 320

15. If a prisoner object to examine his own witnesses on the ground of their having been tampered with by the prosecutor, the session judge ought not to examine them. No. 1203, C. C. 15th March, W. C. 30th March 1839, ... III. 44

16. If a session judge trying a commitment made by a civil judge, be of opinion from the evidence that any other party ought also to be committed, his power is restricted to suggesting the expedience of this course to the civil judge, whose compliance therewith is optional. No. 1206, C. C. 1st April, W. C. 20th April 1839, ... III. 48

17. If the evidence for the prosecution is, in the opinion of the session judge and law officer, clearly *insufficient* to prove the charge against the prisoner, it would be superfluous to proceed with the defence. If, on the other hand, the witnesses for the prosecution should make any statement, which, supposing it to be credited, might tend to inculpate or criminate the accused person, the trial must be completed in the usual manner. No. 1256, W. C. 31st October 1839, Government 10th March 1840, ... III. 66

No. 1267, C. C. 4th October, W. C. 31st October, ... III. 70

18. Held as a general rule that the examination of absent witnesses cannot be received in a criminal trial, and that their personal attendance is necessary. [*But see Cir. Or. Nizamut Adawlut, No. 42, vol. III. C. C. 27th March, W. C. 1st May* 1840.] No. 1280, W. C. 26th June, C. C. 7th August 1840, ... III. 74

CONFESSIONS.

1. The vakeels of the civil court may be required to attest confessions—case of a vakeel dismissed for refusing to do so. A police darogha may summon respectable persons to attest confessions—reporting to the magistrate cases of persons refusing to attend. No. 101, 23d August 1812, ... I. 26

2. Though the prisoner plead "guilty," the trial should proceed in the ordinary course. No. 650, 22d July 1831, ... II. 15

3. If the subscribing witnesses are unable to prove a confession, the judge may call on the person by whom it was written, and the police officer, magistrate, or other officer before whom it was made and by whom it was attested, to depose to any circumstances required to be known connected with it. No. 763, 22d February 1833, ... II. 85

CONTEMPT.

1. Two or more judges of the court of circuit are competent, under the general powers vested in them, to annul an order passed by a magistrate imposing a fine on account of contempt of court. But they should be cautious in the exercise of this power. [*Courts of circuit abolished.*] No. 283, 29th December 1817, ... I. 105

2. Evasion of a magistrate's process should be proceeded against under the rules contained in Section 4, Regulation XI. 1796, and Section 26, Regulation XX. 1817; and is not punishable as a contempt under Regulation XII. 1825, which is applicable solely to contempts committed in open court. No. 619, 21st January 1831, ... II. 1

3. It was held that a person, European or Native, who in a petition to a session judge in appeal from the orders of a magistrate, should falsely and maliciously asperse the character of that officer, was punishable for a contempt of court. [*But the Nizamut Adawlut by a Circular Order, dated 22d November 1839, directed the mofussil authorities not to act on this construction pending a reference to Government. See Act XXX. 1841.*] No. 1098, C. C. 14th July, W. C. 4th August 1837, ... II. 313

5. Wilful and designed prevarication in a witness, which may not amount to perjury, is punishable as a contempt of court. [*Rescinded by Circular Order Nizamut Adawlut, 3d February, 1843.*] No. 1177, C. 14th September, C. 5th October 1838, III. 30

CONTINGENT CHARGES.

1. Judges, who used formerly to submit contingent charges for the sanction of the provincial court, are now to apply to the civil auditor, or direct to Government. No. 668, 18th January 1832, ... II. 31

2 Applications for the erection and repair of moonshis' cutcherries and other contingent charges are to be made direct to Government. No. 701, C. C 6th July 1832, W. C. 17th August and 26th October 1832..... II. 47

CONVICTION OF AN OFFENCE NOT CHARGED.

1. A prisoner may be convicted as an accessary under an arraignment as a principal for the same offence, or of a less offence when arraigned for a greater one of the same nature and upon the same facts. But if the facts or nature of the crime charged were different, it would not be regular or just to convict the prisoner of a charge against which he had not an opportunity of defending himself. No. 123, 20th March 1843, ... I. 35

CONVICTION OF TWO OR MORE OFFENCES.

1. A magistrate is competent to award the punishment he is empowered to adjudge by Sections 38 and 39, Regulation IX. 1807, against the same person on each conviction of repeated offences. [*But see Regulation VI. 1824.*] No. 205, 25th May 1815, ... I. 66

2. The magistrate cannot exceed the sentence he is competent to pass under Regulation XII. 1818, if he think a prisoner for two or more offences deserving a heavier punishment, he must commit [*Further rules for the guidance of the magistrate in such cases are laid down in Regulation VI. 1824.*] No. 807, 3d September 1819,..... I. 124

3. A judge of circuit convicting a prisoner of three offences for which he considers imprisonment for 14 years with *hushaur* sufficient, cannot add a sentence of *hushaur*, that mode of punishment not being mentioned in Clause 1, Section 2, Regulation XV. 1814. No. 860, 26th December 1823,..... I. 149

4. When a prisoner is committed in several cases, the session judge should try the whole or a sufficient number of them, until, on a consideration of the several acts established against the prisoner, the session judge is of opinion that a sentence of 14 years' imprisonment prescribed by Clause 3, Section 2, Regulation XV. 1814, is sufficient and adequate to the crimes charged, and that no reason, therefore, exists for trying the remainder. No. 1011, W. C. 10th June, C. C. 1st July 1836,..... II. 258

COOLEES.

See "Begars," *passim.*

COPIES.

See "Stamps, VIII." *passim.*

1. The prohibition contained in Section 2, Regulation VIII. 1826, against the employment of other than the duly constituted officers of the court, need not be construed to preclude other persons than the regularly appointed officers of the court from taking copies of public documents, with the sanction of the judge or magistrate, for the use of private individuals, at the expense of those who may employ them. No. 407, 11th November 1825,..... I. 171

2. Clause 4, Section 16, Regulation XXVI. 1814, not having been rescinded by Regulation XVI. 1824, private persons may be allowed to take copies of public papers for their own use, at their own expense, on any paper they please. No. 408, 2d December 1825, ... I. 171

CORPORAL PUNISHMENT.

1. Corporal punishment is not authorised in cases of homicide. [*Consequently no additional period of imprisonment can be given in lieu thereof under Section 2, Regulation II. 1834.*] No. 352, 2d May 1828, ... I. 146

2. In executing sentences, on the abolition of the *corah*, the magistrate was directed to substitute an equal number of strokes of the rattan. [*Superseded by Section 2, Regulation II. 1834.*] No. 402, 24th August 1825,..... I. 169

3. Assistants vested with special powers cannot award a longer term of imprisonment in lieu of stripes than one month; but may refer the case to the magistrate if they think the prisoner deserving of a more severe sentence than they can pass. No. 883, W. C. 18th April, C. C. 2d May 1834, ... II. 170

4. Corporal punishment cannot be inflicted on a prisoner convicted of making his escape: it can only be inflicted when absolutely necessary for maintaining good order and discipline in the jail. No. 993, W. C. 24th December 1835, C. C. 22d January 1836, II. 240

5. A sentence of imprisonment for one year in lieu of stripes, in addition to a sentence of six months' imprisonment, passed by a magistrate, is not illegal under the wording of Clause 2, Section 2, Regulation II. 1834. No. 1183, W. C. 12th October, C. C. 9th November, 1838, ... III. 33

6. A magistrate is competent to award one year in lieu of corporal punishment in addition to the term he is authorized to award under Section 5, Regulation XII. 1818, in case of a convict making his escape. No. 1184, W. C. 12th October, C. C. 9th November 1838, ...III. 33

7. It is not competent to a session judge to award stripes under Section 6, Regulation II. 1834, that power being vested solely in the magistrate for the maintenance of discipline in the jail. No. 1302, W. C. 2d July, C. C. 30th July 1841, ... III. 81

See "Neglect of duty by guards, &c."

COSTS IN CIVIL COURTS.

1. When costs are included in a decree, they become part of the matter awarded by the court passing the decree, and as such are liable to interest. No. 715, W. C. 7th September, C. C. 5th October, 1832, II. 56

2. Interest on costs should be granted in all cases, whether the claim be for money, land, or other description of property. No. 1095, C. C. 30th June, W. C. 21st July 1837, ... II. 312

3. The civil courts are competent to award costs in miscellaneous cases. No. 1155, W. C. 22d June, C. C. 13th July 1838, ... II. 16

4. Costs of suit should not be added to the original amount in cases of appeal. No. 1190, C. and W. C. 14th December 1838, ... III. 40

COSTS IN CRIMINAL COURTS.

1. Costs incurred in a criminal court are not recoverable by civil action. If a magistrate, through oversight, have omitted to order reimbursement of costs, he is at liberty to supply the omission by a subsequent order upon application of the party for that purpose. No. 367, 2d July 1824, ... I. 153

2. Costs are in no case to be reimbursed from the Government treasury, but must be levied from the failing party in like manner as costs adjudged in civil suits. No. 373, 21st January 1825, ... I. 155

3. The magistrates may adjudge a reimbursement of costs actually incurred by either of the parties to the suit, in particular instances wherein they shall consider such reimbursement just and equitable. No. 505, 8th May 1829, ... I. 215

4. The payment of costs awarded by a magistrate are to be enforced by the attachment and sale of the property of the party against whom they are awarded. No. 590, 8th April 1831, ... I. 247

5. The criminal courts cannot award any compensation or damages beyond reimbursement of actual costs. The party must be referred to a civil action. No. 931, 31st January 1835, ... II. 20

COURTS OF CIRCUIT.

See "Magistrates' orders, appeals from and revision of."

COURT OF WARDS.

See "Government and its officers, suits against."
"Guardians and minors," Nos. 2, 5.
"Leases." Nos. 2, 3.

CRIMES COMMITTED IN FOREIGN TERRITORIES.

See "Foreign territories, crimes committed in," *passim.*

CRIMINAL APPEALS.

See "Magistrates' orders, appeals from and revision of," *passim.*
See "Dispossession or disputed possession, summary process of criminal courts in cases of," Nos. 5, 13, 20.

CURATOR.

1. Held with reference to the provisions of Section 3, Act XIX. 1843, that the complainant must appear in person to make the solemn declaration thereby required, and such declaration cannot be made through an authorized agent. No. 1319, C. C. 11th February, W. C. 4th March 1842, ... III. 85

CUSTOMS.

1. The term "exact" in Section 39, Regulation IX. 1810, must be construed to apply to the actual collection, and not the mere demand of the illegal duties adverted to in that section; the demand, however, is a misdemeanor under the Regulation and Mahomedan law. No. 76, 31st January 1811, .. I. 18

2. A police darogha is not required to perform the duties prescribed by Section 22, Regulation I. 1812, to prevent an evasion of custom duties. No. 317, 30th June 1820, ... I. 130

DACOITY.

See "Gang robbery," *passim.*

DAMAGES.

1. The provisions of Regulation XV. 1824, [repealed by Act IV. of 1840,] though they prohibit a magistrate from awarding damages for loss of crops or injuries sustained from dispossession, do not pre-

clude him from restoring a party wrongfully dispossessed to the possession of the land with the crop upon it, although the latter may be sown by the wrongful dispossessor. No. 378, 8th April 1825, I. 156

2. Suits by *khoodkasht* ryots for damages sustained in consequence of ejectment, and claims for damages arising from being deprived of water for the purposes of irrigation, do not come within the prohibition contained in Clause 2, Section 5, Regulation V. 1831, and Section 4, Regulation XXVIII. 1814, which apply to suits for damages of a personal nature, and not to those for damages done to property: such suits consequently are cognizable by moonsiffs and may be brought by a pauper. [*The restriction against the cognizance by moonsiffs of suits for personal damages has been removed by Section* 8, *Act VI.* 1843.] No. 919, W. C. 5th December, C. C. 26th December 1834,..... II. 194

3. The criminal courts cannot award compensation or damages in any criminal prosecution, except reimbursement of costs actually incurred. No. 981, 31st January 1835, ... II. 200

4. A suit for the recovery of damages in a civil court can be legally sustained against a party who has been already punished for abduction by a sentence of the criminal court. No. 1251, W. C. 20th September, C. C. 1st November 1839, ... III. 64

5. Suits involving indemnificatory claims to an arbitrary amount of damages, in respect to marriage, on account of breach of contract, or in regard to slander, on account of loss of character, are not cognizable by moonsiffs: but a claim on account of specific loss sustained by expences actually incurred in prosecuting a marriage afterwards broken off, would be triable by a moonsiff like any other claim to money. [*By Section* 8, *Act VI.* 1843, *the moonsiffs are vested with power to try such suits.*] No. 1257, C. and W. C. 1st November 1839,..... III. 67

6. Suits for personal damages and rent-free lands and those enumerated in Clause 2, Section 13, Regulation XXIII. 1814, *though the value do not exceed* 300 *rupees, are not cognizable by a moonsiff, (see notes on Constructions* 919 *&* 1257, *Nos.* 2 *&* 6)*;* consequently when referred to a sudder ameen, they are subject to the stamp duty prescribed for his court. No. 1277, C. C. 10th April, W. C. 24th April 1840, ... III. 73

DAWK.

See "Post Office," *passim.*

DECEASED PERSONS, DEBTS OF.

1. Petitions for certificates to collect the debts of deceased persons must be engrossed on the stamp prescribed by Article 7, Section B. Regulation X. 1829, and written in the official language, but objections may know the nature of the applicant's claim, though partial may, if they please, accompany such petition with an English translation. No. 1316, W. C. 14th January, C. C. 11th February 1842, ... III. 84

2. The certificate should be granted on plain paper. No. 1316, W. C. 14th January, C. C. 11th February 1842, ... III. 84

DECEASED PERSONS, SUCCESSION TO THE ESTATES OF.

1. The complainant must appear in person to make the solemn declaration required by Section 3, Act XIX. 1841: such declaration cannot be made through an authorized agent. No. 1319, C. C. 11th February, W. C. 4th March 1842, ... III. 85

DECISIONS SUMMARILY CONFIRMED.

1. When a decision is summarily confirmed without summoning the respondent, the appellant is not entitled to a refund of any part of the stamp paper, and the vakeel is entitled to his full fee. Should the respondent appear by vakeel without being summoned, and defend the appeal, he must pay his own vakeel; but if the case should be sent back for re-trial, the stamp duty will be returned to the appellant and the pleader will receive one-fourth of the full fee. No. 675, 17th February 1832,..... I. 33

2. All first appeals must be admitted as a matter of course, if preferred within the prescribed period: so that the confirmation of the decision of the lower court, prior to the perusal of the original proceedings, is not rejection, but a final dismissal of the appeal on consideration of its merits. No. 742, 12th December 1832,..... II. 70

3. Decisions passed in the lower courts, and confirmed in appeal by the judge after summoning the respondent, must be considered as decrees of the judge's court, and executed under the rules applicable to the execution of such decrees. [*Section* 5, *Act VI.* 1843, *provides that applications for execution of the decisions of the appellate court in such cases shall be made to the court of original jurisdiction.*] No. 780, C. C. 12th April, W. C. 10th May 1833,..... II. 94

No. 861, C. C. 7th February, W. C. 28th February 1834, ... II. 155

4. An appellant should not be allowed to bring forward fresh proofs, in support of his case, until the petition of appeal and decree have been read over by the judge. No. 790, W. C. 10th May, C. C. 7th June 1833, ... II. 102

5. A principal sudder ameen cannot summarily confirm the decision of the lower court without summoning the respondent. No. 796, W. C. 14th June, C. C. 5th July 1833, ... II. 105

6. When in appeal the decision is summarily confirmed, the cases are to be considered as decided

on the merits and entered as such in the monthly statements, the vakeels being entitled to the full fee, and no part of the stampt paper being returnable. No. 878, W. C. 11th April, C. C. 2d May 1834, ... II. 167

7. No decision can be passed against a respondent who has not been summoned in the usual manner. No. 944, W. C. 10th April, C. C. 1st May 1835, ... II. 207

8. A zillah judge cannot summarily set aside the decision of a moonsiff appointed under the provisions of Regulation V. 1831, from which no appeal has been preferred on the score of illegality or irregularity: but he may admit an appeal therefrom after the lapse of the prescribed period, on sufficient excuse for delay being shewn. No. 979, C. C. 11th September, W. C. 2d October 1835, ... II. 228

No. 1048, C. C. 30th September, W. C. 21st October 1836, ... II. 281

9. When the Sudder Dewanny Adawlut has rejected an application for a special appeal from the decision of a zillah judge in appeal from that of a principal sudder ameen, the zillah judge may apply for permission to review his judgment: but when the Sudder Dewanny Adawlut has summarily confirmed in appeal an original decision of the zillah judge, the order is to all intents and purposes a judgment, and open to review by the Sudder Dewanny Adawlut only. No. 1057, C. C. 11th November, W. C. 25th November 1836, ... II. 287

10. In an appeal from the decision of a collector under Clause 7, Section 30, Regulation II. 1819, the decision cannot be summarily confirmed: the respondent must be summoned, and the appeal tried in the usual manner. No. 1076, C. C. 24th February, W. C. 10th February 1837, ... II. 290

See "Stamps, II." *passim.*
For forged deeds, see "Forgery."

DEFAULT.

See "Dismissal on default and nonsuit," *passim.*

DEFAULTERS, CONFINEMENT OF REVENUE.

See "Civil jails and prisoners," No. 11.

DEFAULTING REVENUE OFFICER.

See "Native officers," No. 9.

DEFENDANTS ABSCONDING.

See "Arrest," No. 5.
See "Attachment," No. 6, 14, 17, 19, 20.

DEPOSIT OF MONEY IN COURT.

1. Money deposited in court as payable to a party, should never be paid to a *vakeel*, save under specific authority conveyed in the *cabalutnamah*: and for any sums paid in other mode, the officers making the disbursement must be held personally responsible. No. 1360, W. C. 5th August, C. C. 9th September, 1842, ... III. 97

See "Pleaders in civil courts," No. 7.

DEPOSIT OR PLEDGE.

See "Mortgage," No. 18.

DEPUTATION.

See "*Assistants to Magistrates*," No. 9.

DISMISSAL ON DEFAULT.

1. It is competent to the court to dismiss a suit on default at the first hearing after the notice prescribed by C. O. S. D. A. 5th November 1812, provided the defaulting party be unable to shew reasonable cause for his default. It is not necessary that the eight days' notice prescribed by Clause 1, Section 12, Regulation XXVI. 1814, should be previously issued: the object of that notice being to warn the parties to be prepared to file their proofs and name their witnesses. Had the defaulting party shewn reasonable cause, and on that ground been allowed to plead, he would have been entitled to the eight days' notice, which the rule cited allows. [*Constructions* 406, 470, 478, 938, 1139, *may be considered as cancelled by Act XXIX.* 1841, *which provides that a suit or appeal shall be struck off, as of course, on default of six weeks on part of the plaintiff or appellant.*] No. 406, 7th October 1825, ... I. 170

2. When the judge had dismissed a suit on default without the notice prescribed by C. O. S. D. A. 5th November 1812, or had refused to hear what the appellant, having attended, had to say in excuse of his default; the provincial court were considered competent to direct the judge to hear the excuses, and if they proved sufficient to restore the suit to the file. [See Note on No. 1.] No. 470, 22d February 1828, ... I. 201

3. The notice to shew cause why the appeal should not be dismissed on default, need not be issued if the appellant be in attendance by vakeel. [See Note on No. 1.] No. 473, 22d February 1828, I. 201

4. A summary appeal will lie, as from a dismissal without investigation of the merits, from the decision of a sudder ameen founded on a decision of the zillah judge, reversed in appeal by the provincial court. No. 661, 7th May 1830, ... I. 339

5. It is not necessary, in cases in the moonsiffs' courts, that the period within which the defaulting plaintiff is to shew cause should be fixed at six weeks: eight days or a fortnight would on ordinary occasions be a sufficient time to allow for the purpose. [Cancelled by Construction 1339.] No. 758, 15th February 1833, ... II. 83

6. When a suit has been dismissed on default, the plaintiff is at liberty to institute a new suit for the same cause of action, as if the case had not been heard. No. 870, W. C. 21st February, C. C. 27th March 1834, ... II. 159

7. If there have been no decision on the merits, but merely a dismissal pronounced on default, the omission of the word "nonsuit" does not bar the claim of the plaintiffs to a summary appeal. No. 870, W. C. 21st February, C. C. 27th March 1832, . II. 159

Under the rules in force prior to the enactment of Act XXII. 1838, which did not allow a summary appeal from a moonsiff's decision, it was held that the judge, on a regular appeal being preferred, could not confirm the dismissal on default by the moonsiff, with mere reference to the reasons assigned for neglect in the original trial, but must either decide the case on its merits, or direct the moonsiff to do so, reversing the dismissal on default. The same rule applies to appeals by defendants on the grounds of decision given against them when prevented by circumstances from attending the court. No. 870, W. C. 21st February, C. C. 27th March 1834, ... II. 159

9. If the appellant has appointed a vakeel, he may be called upon to shew cause for neglect, and if no satisfactory reason be given, the appeal may be struck off: but if the appellant be not in attendance in person or by vakeel, the notice prescribed by Circular Order, Sudder Dewanny Adawlut, 5th November 1812, must be served upon him ere his appeal can be struck off. (See Note on No. 1.) No. 938, 20th March 1834, ... II. 204

10. In a regular suit in which the witnesses named by the plaintiff, though duly summoned, neglected to appear; held that it was incumbent on the judge, under the spirit of Section 6, Regulation IV. 1793, to call on plaintiff's counsel to satisfy him that these witnesses were material to the case, and that he ought not to have struck the case off the file, until he had explicitly called upon the party to proceed in the manner indicated. No. 1126, 26th January, 1838, ... III. 2

11. A petition of special appeal, until the appeal has been admitted, is to be considered as a miscellaneous petition; consequently the notice prescribed by the Circular Order, Sudder Dewanny Adawlut, 5th November 1812, need not be issued, as that notice only applies to suits admitted and pending. (See Note on No. 1.) No. 1139, 23d March 1838, ... III. 8

12. Held that Section 12, Regulation XXVI. 1814, [which requires an eight days' notice to be fixed up in court before the suit be brought to a hearing,] is only applicable to original suits and not to appeals. No. 1191, C. and W. C. 14th December 1838, III. 40

13. The order of a judge dismissing a suit on default, or without investigation of its merits, is open to review. No. 1269, W. C. 3d January, C. C. 7th February 1840, ... III. 70

14. If the appellant to the Sudder Dewanny Adawlut do not appear in person or by vakeel and file his reasons of appeal within six weeks from the date of the institution of the appeal, [i. e. in appeals presented to the court from the date of filing the petition, or, when the petition is filed in the court of original jurisdiction, from the date of its receipt in the Sudder Dewanny Adawlut,] he must be held to have defaulted, and be liable to the dismissal of his appeal; and the mere appointment of a vakeel will not bar the liability referred to. No. 1315, C. C. 31st December 1841, W. C. 7th January 1842, III. 84

15. When an appeal has been dismissed under Act XXIX. 1841, the opposite party will not be entitled to recover his costs, if he appear without having been duly summoned as a respondent. No. 1327, W. C. 16th February, C. C. 4th March 1842, III. 87

16. The rule in Act XXIX. 1841, is general and applies to all appeals—if therefore an appellant to the zillah judge, default under that Act, his appeal is lost and cannot be revived. No. 1334, W. C. 15th April, C. C. 27th May 1842, ... III. 89

17. Construction 758 superseded. No suit can be struck off by a moonsiff prior to filing the answer, until the plaintiff have committed default for six weeks. No. 1339, W. C. 18th May, C. C. 10th June 1842, ... III. 91

18. The interval of the established vacations must not be allowed to be deducted in the calculation of the period beyond which default is incurred under Act XXIX. 1841. No. 1368, W. C. 2d December, C. C. 23d December 1842, ... III. 100

DISPOSSESSION or DISPUTED POSSESSION, SUMMARY PROCESS OF THE CIVIL COURTS IN CASES OF.

1. *(The provisions of Regulation XLIX. 1793, and corresponding enactments, as well as those of Regulation VI. 1813, which authorized the references of cases of disputed possession by the criminal to the civil court, are rescinded and altogether superseded by the provisions of Act IV. 1840, so that now cases of dispossession are not cognizable in a summary manner by the civil courts.)*

2. The provincial court having rejected a summary appeal under Regulation XLIX. 1793, were directed to admit it to try the question of the relevancy of that regulation to the suit in question. No. 17, 29th January 1806, ... I. 5

3. It is not meant that the summary enquiry into the *fact* of dispossession should be *exparte:*

but only that the enquiry be restricted to that fact alone, without an investigation as to the *right* of possession or property. No. 26, 27th September 1806, ... I 7

4. Complaints of forcible dispossession from fish eries, tanks, &c. should be taken up under Regulation XLIX 1793, and the corresponding regulations. No. 28, 28th February 1807, ... I. 8

5. The provisions above cited are applicable only to cases of dispossession by force amounting to a breach of the peace: the fact of dispossession only being the subject of enquiry—all matters of right being cognizable in a regular suit. No. 39, 22d June 1809,... I. 10

6. A proprietor of land is authorized to oust his defaulting ryot, without application to a court of justice, provided no violence is used so as to bring the case within the provisions of Regulation XLIX. 1793. No. 42, 17th September 1808, ... I. 10

7. A plaintiff in a summary suit may prefer his claim in person or by vakeel, and need not prefer it on oath or solemn declaration. No. 110, 3d September 1812, ... I. 29

8. In cases of disputed possession referred from the Foujdaree, under Regulation VI. 1813, the judge should allow a reasonable time to the parties to appear in person or by vakeel and adduce their proofs: should they fail to do so, and an attachment of the land be necessary to prevent a breach of the peace, that measure may be resorted to. No. 140, 23d December 1813, ... I. 42

9. In case of the expiration of the plaintiff's lease before the summary action for possession and damages is determined, though it may not be requisite or proper to adjudge possession to the plaintiff, equitable damages equal to the loss sustained by him, during the period of his lease, should be adjudged to him. No. 159, 28th April 1814, ... I. 48

10. An appeal lies from the decision of the zillah judge passed under Section 5, Regulation VI. 1813, only on the ground of the irrelevancy of the Regulation to the case appealed. No. 281, 18th September 1817, ... I. 103

No. 311, 7th January 1820, ... I. 128

11. The provincial court were considered competent to direct the judge to interfere summarily to prevent certain persons molesting the occupant in possession of a garden. No. 308, 19th November 1819, ... I. 126

12. The judge cannot take up cases of dispossession referred by the foujdaree court during the vacations. No. 368, 3d September 1824, ... I. 153

13. Differences between landlords and their tenants or ryots relative to the right of cultivation only, are not cognizable by the magistrate under Regulation XV. 1824, but must be brought in the civil court under Regulation XLIX. 1793, and Regulation VIII. 1819. No. 482, 9th May 1828, ... I. 205

14. Summary suits for dispossession under Regulation XLIX. 1793, cannot be referred to a principal sudder ameen. [*Superseded by Section* 8, *Act XXV.* 1837. *See Can.* 1202, *No.* 15.] No. 995, C. C. 24th December 1835, W. C. 22d January 1836, ... II. 241

15. An appeal lies to the judge from the decision of the principal sudder ameen under Regulation XLIX. 1793, on its merits and not merely on the ground of irrelevancy. No. 1202, C. C. 15th February, W. C. 8th March 1839, ... III. 44

DISPOSSESSION OR DISPUTED POSSESSION, SUMMARY PROCESS OF THE CRIMINAL COURTS IN CASES OF.

1. The following constructions, which restrict the remedy which the magistrate might afford under Regulation XV. 1824, in cases of dispossession or disputed possession, to cases in which the proprietors of the land are engaged, and which declare it inapplicable to cases in which ryots or under tenants dispute the right of cultivation only, which are to be determined by the civil court or collector under Regulations XLIX. 1793 or VIII. 1819, are superseded by Section 2, Act IV. 1840, which authorises the magistrate to determine all disputes of this nature, whether the parties are proprietors, dependant talookdars, farmers, under farmers, ryots or other persons,

No. 448, 16th March 1827, ... I. 189

No. 453, 13th July 1827, ... I. 191

No. 475, 7th March 1828, ... I. 201

No. 482, 9th May 1828, ... I. 203

No. 546, 23d April 1830, ... I. 231

No. 561, 18th June 1830, ... I. 236

No. 568; 23d July 1830, ... I. 238

No. 579, 17th December 1830, ... I. 242

No. 633, 29th April 1831, ... II. 8

No. 894, C. C. 22d August, W. C. 25th July 1834, ... II. 178

No. 1170, C. & W. C. 7th September 1838, III. 27

2. The provisions of Section 5, Regulation XV. 1824, which prohibit magistrates from awarding damages for loss of crops, or injuries sustained by dispossession, do not preclude the magistrate from restoring to a party wrongfully dispossessed the possession of the land with the crop upon it, though the latter may have been sown by the wrongful possessor. No. 378, 8th April 1825, ... I. 156

3. Held that a magistrate had exceeded his powers in giving possession to the purchaser of mortgaged property, to the exclusion of the mortgagor, on the plea that the mortgage had been redeemed, although the purchaser up to the date of the dispute had never had possession. No. 393, 17th June 1825, ... I. 164

4. Cases under Regulation XV. 1824, cannot be referred to a sudder ameen vested with special powers under Section 5, Regulation II. 1821. No. 415, 14th April 1826, ... I. 174

5. The Constructions 430 and 447, which declared the orders of magistrates under Regulation XV. 1824, open to appeal on the ground of irrelevancy only, are superseded by the provisions of Regulation II. 1829 and Act IV. 1840, which declare such cases open to the usual appeal as in other miscellaneous cases. No. 430, 22d September 1826, ... I. 181

No. 447, 9th March 1827, ... I. 188

6. A having locked up his house at Jaunpoor previous to his departure for Benares, his possession must be held to have continued during his absence; and the violent entry by B, effected by forcibly opening a lock, must be considered to constitute a case of dispossession within the meaning of Regulation XV. 1824; while A's absence was considered as a sufficient cause for the delay in bringing the suit. No. 434, 27th October 1826, ... I. 182

7. A magistrate's order under Regulation XV. 1824, held not to have been affected by that of the collector directing possession to be given to a certain party. No. 445, 2d March 1827, ... I. 186

8. Disputes for personal property cannot be investigated under Regulation XV. 1824. No. 547, 23d April 1830, ... I. 231

9. A magistrate cannot refer disputes under Regulation XV. 1824, to arbitration and enforce the award of arbitrators. His interference extends no further than to prevent a breach of the peace, and when satisfied that the parties have agreed to an adjustment of their dispute, and that there is no ground to apprehend a breach of the peace, he should stay all further proceedings; the parties being of course at liberty to refer their dispute to private arbitration, which would be enforced by the civil court in the usual manner. [*The Construction is cancelled by Sec. 9, Act IV. 1840, by which a magistrate is authorized to refer suits to arbitration.*] No. 571, 6th August 1830, I. 239

10. A magistrate cannot refer a Regulation XV. 1824, suit for report to a sudder ameen. No. 640, 10th June 1831. No. 689, 27th April 1832, II. 12 & 41

11. In a case of disputed possession, the plaintiff asserted that the lands were situated in Purneah, the defendant that they were in Bhaugulpore. The magistrate of Purneah was informed that if the case were cognisable under Regulation XV. 1824, he should make the necessary enquiry; and if it should appear that the lands were in Bhaugulpore, he should refer the parties to the magistrate of that district, and certify to that officer the proceedings held by him in the case. No. 694, 18th May 1832, ... II. 44

12. A magistrate may determine boundary disputes under Regulation XV. 1824. No. 724, 26th October 1832, ... II. 60

13. An assistant vested with special powers is competent to try suits under Regulation XV. 1824, and the magistrate is competent, under the general power vested in him, to confirm, alter, or reverse the order passed by the assistant in such suits. No. 769, C. C. 15th March, W. C. 4th April 1833, ... II. 87

14. Complaints of violent dispossession from fisheries, tanks, &c., are cognisable by the criminal courts under Regulation XV. 1824. No. 856, C. C. 17th January, W. C. 14th February 1834, ... II. 146

15. A magistrate is not competent, after the enactment of Regulation XV. 1824, to certify a case of disputed possession to the civil court under Regulation VI. 1813. No. 875, C. C. 21st March, W. C. 7th March 1834, ... II. 164

16. A commissioner may order a magistrate to take up a case of disputed possession, though the latter do not deem that measure necessary for the preservation of the peace. No. 886, C. C. 13th June, W. C. 11th July 1834, ... II. 172

17. The provisions of Regulation XV. 1824, are applicable to cases of disputed possession between mortgagors and mortgagees, when such disputes may appear to the magistrate likely to terminate in a breach of the peace, and the question is in no way affected by the fact of the mortgage or transfer of property under it, having been registered or not. No. 1006, W. C. 15th April, C. C. 20th May 1836, ... II. 250

18. If neither party in a suit brought under Regulation XV. 1824, will appear and produce their evidence and proofs, the magistrate should strike the case off the file, taking such measures as may appear necessary to prevent a breach of the peace, extending even to the attachment of the property if necessary. If one of the parties should attend and produce his proofs, the case should be tried *exparte*. No. 1029, C. C. 29th July, W. C. 19th August 1836, ... II. 2

19. A magistrate is competent, with a view to prevent affrays and breaches of the peace, in cases of disputes about land gained by alluvion, to put one of the parties in possession, being guided in his decision by the principle laid down in Regulation XI. 1825. No. 1145, 20th April 1838, ... III.

20. A session judge is competent at any time to suspend the execution of a magistrate's final order in cases under Regulation XV. 1824, pending the decision of the case in appeal. No. 1157, W. C. 6th July, C. C. 3d August 1838, ... III. 17

21. A dispute between a sumeendar and the proprietor of the *bunder* of the same sumeendaree, is cognisable by the magistrate under Regulation XV. 1824. No. 1164, C. C. 10th August, W. C. 27th July 1838, ... III. 21

22. In a suit under Act IV. 1840, should the auction purchaser plead that he, in attaching the talook of a *putneedar* created by the former proprietor, is only exercising his legal right, the magistrate will, under Section 10, satisfy himself whether the contested tenure is of that description which is protected by law: in cases in which the tenure is not of that description, the purchaser is not obliged to apply to any court for the enforcement of his rights. No. 1312, C. C. 22d October, W. C. 26th November 1841, ... III. 83

23. Disputes between zumeendars and *kuthoomdars*, not for possession of defined portions of land, but for the right of management and collection of estates, should be governed by Section 10, Act IV. 1840; the zumeendar who possesses the right of attachment should be held in possession—the other party being referred to a civil suit to determine whether the zumeendar has justly exercised that right. No. 1333, W. C. 15th April, C. C. 27th May 1842, ... III. 89

24. An assistant to a magistrate vested with special powers is competent to dispose of cases under Act IV. 1840. No. 1344, W. C. 20th June, C. C. 8th July 1842, ... III. 92

25. A magistrate cannot attach land *pending* the decision of a suit under Act IV. 1840, nor call on the collector to do so under Regulation V. 1827, before he has come to a decision on the case. No. 1347, C. C. 24th June, W. C. 2d August 1842, III. 92

26. In a dispute for chattels or other moveable property, if the fact of illegal and forcible dispossession have been established, the magistrate is competent to interfere: but not otherwise. No. 1349, W. C. 1st July, C. C. 29th July 1842, ... III. 93

27. A, a ryot, asserting himself to be under engagements to B, an indigo planter, complains that C, another planter, who states that he made advances to A, is about forcibly to cut the crop. Held that A being in possession, may deliver the disputed plant to either B or C, and that the magistrate under Act IV. 1840, may prohibit C from attempting to take forcible possession; C having his remedy in the civil court under Regulation VI. 1813 and Act X. 1836. No. 1369, C. C. 5th August, W. C. 2d September 1842, ... III. 97

28. In a dispute between the proprietor and mortgagee of an orchard, the magistrate, on proof of possession of the latter, maintained his possession: the session judge on appeal directed the magistrate to maintain the proprietor in possession and refer the *mortgagee* to the civil court. The Nizamut Adawlut held that the course adopted by the magistrate was right. No. 1366, W. C. 2d December, C. C. 23d December 1842, ... III. 98

DISTRAINT.

1. The process of distraint was primarily intended to enable landholders and farmers to realize their rents for the current year with punctuality: but Regulation II. 1805, does not restrict the process from being employed for arrears of a former year, provided the person upon whom the distress is levied continue to be an under tenant of the distrainer. No. 27, 1st February 1827, ... I. 7

2. The rule contained in Section 6, Regulation XVII. 1793, and Section 6, Regulation XXVIII. 1803, that, in cases of illegal distraint, there should be adjudged to the injured tenant restitution of the value lost by him by the distraint, and as much again as damages, is equally intended by Section 17, Regulation V. 1812, which provides, that the tenant may have his remedy by a summary suit, which was before confined to a regular suit—the quantum of the remedy allowed being unaltered. No. 327, 1st September 1820, ... I. 134

3. The rules of distraint being general, apply to rent of lands exempt from the public assessment as well as to the rent of lands subject thereto. No. 357, 23d February 1821, ... I. 138

4. Individuals other than the alleged defaulter and his surety, who may lay claim to distrained property, are not entitled to the release of such property on security; nor can their claims be investigated, according to the provisions of Section 15, Regulation V. 1812. Though the property of the defaulter have been sold from his inability to give security, he may have his summary action, but any claim by a third party must be investigated in a regular suit under Section 9, Regulation VII. 1799. No. 348, 19th April 1822, ... I. 144

5. The defaulter executing a bond required by Section 15, Regulation V. 1812, fails to institute his suit within the prescribed period, and the depand is in consequence realised from him or his surety: the failure to institute the suit, though it subjects his property to re-attachment and sale, does not deprive him or his surety of the benefit of a summary suit, for the recovery of damages on account of injury sustained by the illicit sale of the property. No. 420, 2d June 1826, ... I. 177

6. A complaint preferred by a *zumeendar* or his *gomashtah* against *ryots* for breach of attachment of crops, shall be tried in a summary manner. No. 503, April 1829, ... I. 215

7. The moonsiff must proceed according to the prescribed rules to sell distrained property, though no *kubooliyat* be produced by the landholder: and if the landholder can shew in a summary suit, by his village accounts, or other probably true evidence, that the arrear deemed is due, he is entitled to a decree, though he may not have granted a *pottah* or received a *kubooliyat* from the defaulter. [*Act I. 1839, cancels the power of moonsiffs to act as agents for the sale of property attached for arrears of rent.*] No. 574, 17th September 1830, ... I. 240

8. The moonsiff or other competent officer called on to sell property attached for rent, is entitled to be reimbursed expenses actually and necessarily incurred, though no sale should take place, and to realise the same, if not paid, by the sale of a sufficient portion of the attached property. [*See remark on the proceeding.*] No. 714, C. C. 31st August, W. C. 5th October 1832, ... II. 55

DOCTORS, NATIVE.

See "Native Officers," No. 8.

DUKHILNAMEH.

1. *Dukhilnamahs* taken from individuals put in possession of houses, lands, &c., decreed in their favor, need not be written on stampt paper. No. 870, W. C. 21st February, C. C. 27th March, 1834, ... II. 159

DUSTURBUNDEE.

*See "Razeenameh," No. 5.

DWELLING HOUSES.

1. In reply to a commissioner's question whether magistrates can, under any circumstances, be permitted to transact the current business of their offices in their private dwellings, the Court deemed it sufficient to observe that, when sitting as a criminal judge, the magistrate must sit in the established court-house; and that they did not deem it necessary to enter upon the general question of the powers of a magistrate out of office. No. 645, 1st July 1831, ... II. 14

EAST INDIAN

See "Assessors," No 3

EMBANKMENT

1. If a person should construct a *bund* on his own land injurious to the property of another, the case would come rather under the cognizance of the civil than the criminal courts; but cases may arise in which the immediate interference of the magistrate would be proper to prevent either a breach of the peace or serious injury to the property of the complainant. No. 1091, C. C. 26th May, W. C. 26th April 1837, ... II. 309

EMBEZZLEMENT.

1. In cases of embezzlement, by native officers, it is essentially necessary that the judge, after a summary enquiry, pass a summary decree, adjudging the particular sum recoverable, according to the rule laid down in Regulation XVIII. 1817. No. 334, 29th December 1820, ... I. 186

2. The commitment of a native officer of the civil court for embezzlement, should be made by the magistrate and not by the judge. No. 518, 7th August 1829, ... I. 220

3. Regulation II. 1813, does not intend a repeal of the Mahomedan law relative to the offence of embezzlement, which being punishable under that law may clearly be committed for trial to the court of circuit. No. 543, 2d April 1830, ... I. 230

4. Though a summary enquiry into cases of embezzlement of the ministerial officers of the judge's court may be conducted by him under Section 7, Regulation XVIII. 1817, he cannot commit for that offence—that duty being left to the magistrate, to whom the judge should submit his proceedings, if grounds appear for subjecting the accused to a criminal trial. The magistrate will in such case use his own discretion in committing or releasing the accused, on a fair consideration of the evidence adduced. No. 691, 11th May 1838, ... II. 43

5. Regulation II. 1813, is still applicable to native officers employed in the commercial department entrusted with public money, and are not affected by the provisions of Regulation IX. 1829. No. 903, C. C. 3d October, W. C. 14th November 1834, ... II. 184

6. The case of a peon on the establishment of a Government functionary, making away with money entrusted to or collected by him, does not come within the meaning of Regulation II. 1813: such offence must be considered as a misdemeanor punishable under the general Regulations. No. 1200, C. C. 18th January, W. C. 1st February 1839, ... III. 44

7. Embezzlement is a bailable offence, and a person charged with that offence should have the option of giving bail and obtaining his enlargement from restraint. No. 1288, W. C. 19th July, C. C. 16th August 1839, ... III. 60

ENGLISH LANGUAGE.

1. An European defendant filing his answer in Persian or the vernacular language on the prescribed stamp, may file a translation thereof in English on unstamped paper. It is no part of the duty of the court to furnish the defendant with translations, he must procure a person duly qualified to interpret for him. No. 1035, C. and W. C. 12th August 1836, ... II. 273

2. The deposition of an European witness must be recorded in English, and a translation of it prepared by the court and annexed to it. No. 1035, C. & W. C. 27th January 1837, ... II. 274

3. It is competent to a commissioner or session judge to call upon a magistrate for an English report of any case that may be before him in his appellate capacity. No. 1071, W. C. 3d February, C. C. 3d March 1837, ... II 296

ESCAPE OF CIVIL PRISONERS

See "Civil Jails and Prisoners, Nos. 5, 6

ESCAPE OF CONVICTS

1. The escape of a convict not having been attended with violence, it was not competent to the magistrate to commit him to the court of circuit, though he was twice before convicted of that offence; the magistrate should himself dispose of the case. No. 501, 16th April 1829, ... I. 214

2. A prisoner, sentenced by the sessions court to fine and imprisonment, appealed to the Nizamut Adawlut, and was admitted to bail pending the appeal; he absconded and the bail was forfeited. Held that his property was not liable to forfeiture under the provisions of Regulation XI. 1796, and Section 26, Regulation XX. 1817, which are applicable only to persons *charged* with a crime, but not convicted; and that he must be proceeded against as an absconded convict. No. 1124, 29th December 1837, ... III. 1

3. The magistrate's proceedings regarding the escape of convicts should be submitted to the session judge under the provisions of Clause 1, Section 14, Regulation XVII, 1816; but, agreeably to Clause 2 of the same section, the escape of the convict should be reported to the superintendent of police, and measures for his apprehension taken by the magistrate in communication with that authority. No. 1162, C. and W. C. 3d August 1838, ... III. 20

4. The superintendent of police cannot exercise any authority over the guards of prisoners effecting their escape. No. 1162, C. and W. C. 3d August 1838, ... III. 20

5. A magistrate may sentence a prisoner, convicted of escaping, to one year's imprisonment in lieu of stripes in addition to the term he is authorized to award under Section 5, Regulation XII. 1818. No. 1184, C. C. 9th November, W. C. 12th October 1838, ... III. 33

6. A prisoner sentenced to imprisonment for escaping from jail is entitled to exemption from labor on payment of a fine, for the period of his confinement for that specific offence. No. 1215, C. C. 10th May, Govt. 1st August 1839, ... III. 52

7. A prisoner was convicted and sentenced by the sessions court, but the issue of the warrant was stayed pending a reference, regarding other prisoners in the same case, to the Nizamut Adawlut: before orders were received on the reference, the prisoner made his escape from jail. Held that he is punishable by the magistrate as a convict under Clause 1, Section 5, Regulation XII. 1818. No. 1246, C. C. 23d August, W. C. 6th December 1839, ... III 63

EUROPEAN BRITISH SUBJECTS IN CIVIL MATTERS.

1. Although under the old law the civil courts could not give judgment for land in favor of an European who had not the sanction of Government to hold it, they were by a Circular Order directed, before passing judgment, to allow the European an opportunity of applying for the sanction of Government No. 55, 28th November 1809, ... I. 13

2. The suits of European indigo planters against their ryots may be heard in the courts of the native commissioners. [*This Construction was superseded by Sec. 3, Reg. XXIII 1814, but revived by Act XI. 1836, and Sec. 7, Reg VI. 1843.*] No. 66, 12th December 1809, ... I. 13

3. 53 Geo. III., Cap. 155, Sec. 107, does not preclude the necessity of requiring an European British subject to enter into the bond to obey the judgment of the court, required by Section 2, Regulation XI. 1797, [Sec. 7, Reg. XVIII. 1803], though that required by Sec. 3, Reg. XXVIII. 1793, [Sec. 3, Reg. XVIII. 1803], rendering him amenable to the court, need not be taken. The bond must be written on stampt paper. [*Under the new Charter, 3 and 4 Will. IV. Cap. 85, the execution of the bond is not required.*] No. 174, 27th July 1814, ... I. 54

4. A bond executed in favor of an European British subject in Calcutta, where stamps are not used, is admissible in evidence, though unstamped. (*But see Reg. XII. 1826.*) No. 174, 27th July 1814, ... I. 54

5. Suits not cognizable by *moonsiffs* from one party being an European British subject, an European foreigner or American, should be referred to the register or *sudder ameen*. [*The prohibition against the cognizance of such suits by moonsiffs has been removed by Sec. 7, Act I I. 1843.*] No. 219, 17th August 1815, ... I. 7

6. The parents of an individual being Europeans, he must be considered to be an European, without reference to the place of his birth. No. 397, 29th July 1825, ... I 166

7. An European British subject is not eligible to the office of manager of an estate attached under Sections 26 and 27, Regulation V. 1812. No. 449, 30th March 1827, ... I. 189

8. The bond prescribed by Section 2, Regulation XI. 1797, and Section 7, Regulation XVIII. 1803, should be written on the stamp required for other bonds taken by order of a court. It should be filed with the plaint: if not filed with it, the judge should nonsuit the plaintiff. [*Under the new Charter, 3 and 4 Will. IV. Cap. 85, the bond need not be executed.*] No. 493, 30th January 1829, ... I. 209

9. Under 53 Geo. III. Cap. 155; Section 107, an European British subject may sue and be sued for sums exceeding 500 rupees. No. 493, 30th January 1829, ... I. 209

10. The property of an European defendant is liable to attachment in the same manner as that of a native, on the courts being satisfied by sufficient proof that the defendant intends to abscond or withdraw himself, or remove his property, the detention of which is necessary for the satisfaction of eventual judgment. No. 586, 6th April 1831, ... I. 246

11. A decree passed against an European British subject must be enforced in the same manner as one against a native. No. 786, 3d May 1833, ... II. 98

12. Illegitimate children must be classed with their mothers and considered as British subjects,

Europeans foreigners, or Americans, according as their mothers may be respectively British, foreign, European, or American. No. 806, W. C. 26th July, C C 6th September 1838,..... II. 113

13. Suits brought by or against an European manager of a native minor's estate, not being personal, must be received and tried by the Company's courts by which they would, from their amount, be cognizable, if the parties were natives. [*See subsequent rule in Act XI. 1836, and Act VI. 1843, which renders Europeans amenable to the Company's courts.*] No. 848, C. C. 13th December, W. C. 16th October, Government, 2d December 1833, II 113
No. 967. C C 17th July 1835,..... II 221

14. The decrees of the Calcutta court of requests are to be executed in the same manner as other decrees; the fact of both parties being Europeans making no difference. No. 952, C. C. 6th February 1835, ... II. 201

15. It is imperative on the zillah judge to take charge of the property of an European British subject dying within his jurisdiction, and, on a will being discovered, to deliver, the same over to the party who may obtain probate thereof. The fact of there being a claimant, near relation, or respectable friend on the spot, willing to take charge of and be responsible for the property, will not exonerate the judge; he must retain charge until the registrar of the Supreme Court, to whom the circumstance should be immediately reported, or some other person, shall have obtained letters of administration, when the property is to be delivered over to the person to whom such letters may be granted. No. 983, W.C. 16th October, C. C. 13th November 1835,..... II. 231

16. An European defendant filing his answer in Persian or the vernacular language on the prescribed stamp may file a translation thereof in English on unstamped paper. It is no part of the duty of the court to furnish the defendant with translations, he must procure a person duly qualified to interpret for him. No. 1035, C. and W. C. 12th August 1836, ... II. 273

17. The deposition of an European witness must be recorded in English, and a translation of it prepared by the court and annexed to it. No. 1065, C. and W. C. 27th January 1837..... II. 274

EUROPEAN BRITISH SUBJECTS IN CRIMINAL MATTERS.

1. Complaints of petty criminal offences against British subjects, such as do not warrant commitment for trial before the Supreme Court, were not meant to be included in the provisions contained in Section 2, Regulation II. 1796, and Section 19, Regulation VI. 1803, when the magistrate is not qualified to act as a justice of the peace. Not 20, 3d May 1806, ... I. 6

2. A magistrate, though a justice of the peace, cannot compel an European British subject, under Clause 3, Section 6, Regulation VII. 1819, to pay the wages of a servant. No. 340, 26th May 1821, ... I. 139

3. But though the European British subject, as master, cannot be proceeded against, the magistrate may proceed on his complaint against servants or workmen, who may leave his service, refuse to work, &c., they being amenable to the magistrate's authority. No. 345, 20th July 1821, ... I. 142

4. The appeal from the conviction of an European British subject, by a magistrate in his capacity of justice of the peace, lies to the Supreme Court, and not to the court of circuit. [*Superseded by Act IV. 1843.*] No. 340, 26th May 1821,..... I. 139

5. European British subjects were not liable to the *chowkeydarree* assessment until they were made liable by Section 3, Regulation XV 1827. No. 414, 23d December 1825, ... I. 172

6. The Court recorded their opinion that there appeared no reason why an European British subject, charged by a native with assault under 53 Geo. III. Cap. 155, Sec. 105, should not be allowed the privilege of appearing by attorney, which is enjoyed by natives. No. 570, 30th July 1830, ... I. 238

7. An assistant to a magistrate is not competent to take cognizance of complaints against European British subjects to the extent specified in 53 Geo. III. Cap. 155, Sec. 105, as the powers in question can only be exercised by a person possessing the full powers of magistrate. No. 595, 17th June 1831, I. 248

8. Magistrates are competent under 53 Geo. III. Cap. 155, Sec. 105, to punish European British subjects when convicted of assault, forcible entry, or other injury accompanied by force not amounting to felony. If two or more distinct offences of this nature be charged separately, the Court were aware of no reason why the sentences on conviction should not also be separate. The Court further observed that in such cases, confinement is authorised only in default of payment of fine: and that if, on investigation, the magistrate should be of opinion that the offender ought to be brought to trial before the Supreme Court, he should proceed in the usual manner, reporting the case for the information and orders of Government. No 632, 8th April 1831, ... II. 8

9 On the authority of the case of Mandeville in the printed reports of the Nizamut Adawlut, page 111, volume II., it was held that the party claiming exemption from the jurisdiction of the Company's courts, on the ground that he is an European, is bound to prove his plea. No. 759, 5th February 1833, ... II. 88

10. On requiring security or a recognizance to keep the peace from an European British subject, the magistrate is not restricted as to the amount, by the penalty he is authorised to levy from such European British subject by 53 Geo. III. Cap 155,

Sec. 105, as in the event of a breach of the peace occurring, the magistrate cannot levy the penalty of the bond, it being expressly declared by Circular Order of Government to the commissioners of circuit under date 9th June 1830, that the only proceeding for the forfeiture of the penalty is in the Supreme Court. No. 826, 6th September 1833, ... II. 125

11. No appeal lies to the commissioner of circuit from the orders of a magistrate imposing a fine on an European British subject [*Superseded by Act IV.* 1843.] No 900, 12th September 1834, II. 183

12. The illegitimate son of an European British subject by a native mother can be tried by the local courts on a charge of adultery. No. 978, W. C., 11th September, C. C. 9th October 1835, ... II. 228

13. A married woman, the legitimate child of a British father, is not amenable to the local courts on a charge of adultery brought against her by her husband. No. 978, W. C. 11th September, C. C 9th October 1835, ... II 228

14. This construction regarding the power of courts to punish Europeans for contempt is superseded by Act XXX. 1841. No. 1098, C. C. 14th July, W. C. 4th August 1837, ... II. 313

15. The provisions of Section 4, Regulation VII. 1819, for compelling a person to provide for his wife and children, is not applicable to European British subjects, as defendants. No. 1141, C. and W. C. 23d March 1838, ... III 10

16. Held that Sections 33 and 35, Act XVII. 1837, [for punishing certain offences against the post office laws,] are not applicable to European British subjects, resident in the mofussil, as those persons have not by any act of the legislature been made amenable to the local authorities in the administration of the penal enactments of the Government of India. No. 1296, W. C. 21st May, C. C. 18th June 1841, ... III. 79

EUROPEAN FOREIGNERS.

See "European British Subjects," *passim*.

EUROPEAN PUBLIC OFFICERS.

1. Magistrates and other public functionaries who were not liable to civil actions in the country courts, for damages on account of alleged injuries committed in their official capacity, before the passing of Act XI. 1836, are not rendered liable by that Act. No. 1051, Govt. 10th October 1836, ... II. 283

2. A commissioner appointed under Act XXVI. 1839, to enquire into charges against public officers cannot legally act until he has subscribed the oath prescribed by Section 11 of the Act, before an officer authorized to administer the same. No. 1289, W. C. 28th November, C. C. 19th December 1840, III. 77

EVASION OF PROCESS.

1. A magistrate cannot punish the evasion of his process of arrest as a contempt of court; he must proceed according to the rule laid down in Section 4, Regulation XI. 1796, and Section 26, Regulation XX. 1817. No. 619, 21st January 1831, ... II. 1

See "Magistrate's orders, appeals from and revision of," No. 29.

EXCLUSION FROM PUBLIC EMPLOY.

1. A magistrate is not empowered to declare that an officer, proved guilty of wilful neglect in allowing convicts to escape, shall never be employed in the sillah in any capacity whatever. "No. 157, 28th April 1814, ... " I. 48

2. "A commissioner has no power to declare any person excluded from future employ in his division." No. 1065, C. C. 16th December 1836, W. C. 6th January 1837, ... II. 292

EXECUTION OF DECREES.

I. Limitation of time for execution.

1. A decree not enforced for 12 years and upwards may be executed without a fresh suit, provided good and sufficient cause be shewn for the delay, and the opposite party offer no valid objections. No. 3, 8th April 1802, ... I. 1

2. A decree not executed when it was passed, may be executed on application being made within 12 years from the date thereof, after calling on the opposite party to shew cause why it should not be executed. If the decree-holder omit for 12 years to make application for execution, his application should not be admitted, unless he establish to the satisfaction of the court, good and sufficient cause for the delay. No. 136, 28th October 1813, ... I. 40

3. A notice, prior to execution, should be issued in all cases in which a year has elapsed since the date of the decree, or execution may be sued out against the heirs of the original parties, as prescribed by Clause 8, Section 15, Regulation XXVI. 1814, when any doubt may exist as to the property, or otherwise of executing the decree. [Section 7, Regulation VII. 1825, declares that the notice *shall invariably* be issued in such cases]. No. 238, 16th February 1816, ... I. 79

4. In a suit to carry execution of a moonsiff's decree, the cause of action must be considered to have arisen from the expiration of one year from the date of the decree, and such suit instituted 14 years after the date of the decree would be inadmissible, unless good and sufficient cause were shewn for the delay. No. 495, 27th February 1829, ... I. 211

5. Execution of a summary decree may be taken out within 12 years from the date of such decree.

No. 1268, C. C. 9th August, W. C. 6th September 1839, ... II. 70

6. Construction 136, which requires good and sufficient cause to be shewn for the execution of decrees after 12 years, must be the rule of guidance in cases of decrees in favor of Government: the terms of Section 2, Regulation II. 1805, declaring the claims of Government cognisable by the courts, if preferred within 60 years, being considered as having reference to *claims preferred* and not to *claims adjudged*. No. 1346, W. C. 1st July, C. C. 22d July 1842, ... III. 93

II. What may and what may not be sold in execution of decrees.

1. The land of the defaulter other than that for which the balance is due cannot be sold in execution of a summary decree: but his interest in that for which he is in balance, may be sold, as well as his chattels. No. 4, 11th January 1803, ... I. 2

2. When a summary judgment has been given, the defendant's *talook* or other transferable tenure, for the rent of which judgment has been passed, may be sold at the conclusion of the current year. But the judge is not authorized to direct the collector to sell on the mere allegation of a balance due, without any enquiry. No. 129, 8th July 1813, ... I. 36

3. The *talook* or other transferable tenure cannot be sold if the defaulter tender the balance adjudged to be due. No. 130, 15th July 1813, I. 37

4. Real property cannot be sold in execution of a summary decree. No. 496, 13th March 1829, ... I. 211

5. A decree against a resident of Calcutta may be executed against any property belonging to him that may be found beyond the limits of Calcutta. [See Act XXIII, 1840.] No. 721, C. C. 5th October, W. C. 9th November 1832, ... II. 58

6. The judge is competent, *with the consent of the parties*, instead of selling the estate of the debtor, in satisfaction of the debt, to cause it to be attached until the amount due be realized from the proceeds. Such attachment must be made through the collector. No. 752, W. C. 21st December 1832, C. C. 1st February, Government 8th March 1833, ... II. 77

7. Pensions granted by Government are not liable to attachment in satisfaction of decrees of court. No. 786, C. C. 3d May 1833, ... II. 99

8. The salaries of public officers may be attached in execution of a decree, though a pension cannot. [*See Cir. Or. Sudder Dewanny Adawlut, 20th January* 1843.] No. 827, W. C. 9th August, C. C. 6th September 1833, ... II. 126

9. Mortgaged property may be sold in execution of a decree obtained by other than the mortgagee, with a reservation, however, of his rights and interests. No. 858, C. C. 24th January 1834, ... II. 148

10. The right and interest of a *jotedar* in his *jote* may be sold in execution of a decree. No. 890, C. C. 11th July, W. C. 5th September 1834, II. 177

11. The salary of a military officer cannot be attached in execution of a decree. No. 902, W. C. 26th September, C. C. 24th October 1834, ... II. 183

12. Nor can the pay of a sepoy: though the creditor may proceed against the person and property of the sepoy as in any other case. No. 1195, C. C. 27th September, W. C. 31st August 1838, ... III. 30

13. A moonsiff is competent to sell instruments of husbandry in execution of a decree. No 962, W. C. 26th June, C. C. 31st July 1836, ... II. 219

14. *Waqf* property [in the present instance appropriated for the support of a *masjid*] cannot be alienated or sold in execution of a decree. No. 1166, C. C. 17th August, W. C. 20th July 1838, ... II. 25

15. The crops on *chonkeydaree* lands may be sold in execution of decrees. No. 1212, W. C. 19th April, C. C. 12th July 1839, ... III. 50

16. If no purchaser be forthcoming for a house as it stands, it is not competent to the court to detach from the building any of the materials, and sell them separately. The same applies to trees, which cannot be cut down till they have been sold. No. 1227, W. C. 21st June, C. C. 2d August 1839, ... III. 56

17. Unproved claims of B against C may be considered as assets available in execution of A's decree against B, and may be sold by auction, when the auction purchaser would acquire the right of demanding payment from C, or, in the event of non-payment, suing him for the recovery of the debt. No. 1248, W. C. 6th September 1839, C. C. 3d January 1840, ... III. 64

18. The same principle applies to claims in respect to which a decree has been passed, the auction purchaser possessing in this instance the right to sue out execution in the same manner as the original decree-holder, W. C. 6th September 1839, C. C. 3d January 1840, ... III. 64

III. Execution stayed on Security.

1. There is a discretion vested in the appellate court to direct the lower court to stay execution of a decree pending appeal, and even to restore the appellant to possession, if the respondent should have been put in possession in execution of the lower court's decree [See Construction 1077]. No. 90, 12th September 1811, ... I. 21

2. Execution of decrees for money, or moveable property, *must be stayed* during appeal, provided the appellant give good and sufficient security for performing the decision that may be passed. No. 106, 10th July 1812, ... I. 28

No. 284, 29th December 1817, ... I. 105

3. As the security required to stay execution of decrees appealed from, is exclusive of costs, payment of costs should invariably be enforced, though execution may be stayed in other respects. No. 110, 3d September 1812, ... I. 29

4. The execution of a decree of a zillah judge for the forfeiture of an estate to Government for the offence specified in Section 22, Regulation VI 1795, and Section 22, Regulation XXVII. 1803, may be stayed during an appeal to the provincial court on security under Section 11, Regulation XLIII. 1808. No. 198, 8th March 1815, ... I. 62

5. The word "empowered" in Clause 5, Section 46, Regulation XXIII. 1814, is not considered as modifying the general rule in Section 12, Regulation XIII. 1808, [that money decrees are to be stayed on security pending appeal,] which still is in full force. No. 372, 9th April 1817, ... I. 97

No. 284, 29th December 1817, ... I. 105

6. Clauses 4 and 6, Section 45, Regulation XXIII. 1814, appear to apply the rule of Section 12, Regulation XIII. 1808, to moonsiffs' decrees. No. 284, 29th December 1817, ... I. 105

7. In cases appealable under the regulations, the decree holder should not be put in possession without security, until the period of appeal has elapsed. The decree however may be executed on tender of sufficient security. (*It was ruled by Construction* 1077, *that this Construction has not been superseded by Clause* 3, *Section* 16, *Regulation V.* 1831.) No. 536, 1st January 1830, ... I. 227

8. The court stayed the execution of a decree, which declared the appellants to be slaves, without demanding security from them. No. 550, 7th May 1830, I 232

9. It rests with the judge, to whom the appeal is preferred, to order or stay execution of the decree; and not to the register [or principal sudder ameen] to whom the judge refers the appeal for trial. No. 646, 8th July 1831, ... II. 14

10. The zillah judge cannot stay the execution of a summary decree of the collector. No. 738, W. C. 16th November, C. C. 7th December 1832, II. 87

11. The payment of fees in pauper as well as in other cases cannot be stayed on the ground of an appeal having been preferred from the first decision No. 776, W. C. 4th April, C. C. 3d May 1833, II. 91

12. All decisions of zillah judges decreeing forfeiture of land, in cases of resistance or evasion of process, are appealable to the Sudder Dewanny Adawlut and without reference to the annual produce, *jumma*, or fine; and execution must be stayed until the expiration of the period prescribed for appealing therefrom. No. 780, W. C. 12th April, C. C. 10th May 1833, ... II. 94

13. The officer in charge of the judge's court is competent to stay execution of a decree appealed from—taking security if necessary. No. 998, C. C. 8th January, W. C. 5th February 1836, ... II. 243

No. 1035, C. C. 19th August, W. C. 16th September 1836, ... II. 276

14. The assignment of the appellant of his own lands as security to stay execution pending appeal is inadmissible. No 1024, C. C. 8th July, W. C. 12th August 1836, ... II. 265

15. Construction 90 is not considered as precluding the lower courts from exercising a discretion to delay, for a reasonable time, the execution of their own orders for giving possession to a respondent, until the receipt of instructions from the appellate court. No. 1077, W. C. 10th March, C. C. 25th March 1837, ... II. 299

IV. Sale of Land or other Property in execution.

1. No sale of land, whether *lakheraje* or *mal*, can be made otherwise than through the Board of Revenue and collector. (*Section* 2, *Regulation VII.* 1825, *authorizes the courts to sell gardens, orchards, and small portions of lakheraje land).* No. 71, 29th November 1810, ... I. 16

2. All sales of land in execution of summary decrees must be made through the revenue authorities. No 129, 15th July 1813, ... I. 87

3. The sale of *putnee* and *dur putnee talooks* in execution of decrees must be made by the collector. No 349, 26th April 1822, ... I. 144

4. The rule contained in Section 3, Regulation VII. 1825, as regards the issue of notice of sale of land, is applicable to sales conducted by the officers of the courts: but Section 12, Regulation XLV. 1793, is still in force and applicable to sales by collectors. No. 601, 30th September 1831, ... I. 249

5 As the sale of *putnee* tenures in execution of decrees must be conducted by the collector, the report required by Section 2, Regulation XIV. 1793, is to be made to the commissioner. No. 897, 5th September 1831, ... II. 182

6. The sale of *shikustee* and other transferable talooks, in execution of decrees, should be conducted by the collector in the same manner as that of *putnee* talooks. No. 921, C. C. 12th December 1834, C. C. 23d January 1835, ... II. 195

7. Houses, gardens, orchards, and small portions of rent-free land should be sold in the same manner as personal property by the civil courts; and all land paying revenue to Government, however small, not being orchards or gardens, through the revenue authorities. No. 933, C. C. 20th February, W. C. 20th March 1835, ... II. 201

V. Payment of purchase money and distribution of Assets.

1. The rule contained in the Circular Order, Sudder Dewanny Adawlut, 6th June 1828, for retaining the purchase money in deposit until the period for preferring objections to the sale has elapsed and possession been given to the purchaser, does not apply to the case of a purchaser, who refuses to take possession when tendered. In such case the money should be paid to the decree holder, and the purchaser warned that he must abide the consequences of his refusal. No. 532, 4th December 1829, ... I. 225

2. If the purchaser refuse to pay the purchase money and take possession, and the property on a resale be sold for a smaller sum, the difference must be realized from the purchaser by the process prescribed for enforcing a decree of court. No. 554, 28th May 1830, ... I. 233

3. If the proceeds of the sale of the property of a pauper plaintiff whose suit was dismissed with costs, be insufficient to satisfy all demands, the court, after paying the pleader's fees, should exercise its discretion to satisfy the other demands, leaving the party dissatisfied with his order to appeal. No. 621, 21st January 1831, ... II. 3

4. Personal property sold in execution of a decree should be paid for before delivery. If the seizer or other officer conducting the sale, deliver the property, and the purchaser refuses to pay the purchase money, the former will be compelled to make good the price, and will have to recover it from the purchaser in the regular course of law. No. 787, 3d May 1833, II. 98

5. Inadequacy of price is not a legal ground for annulling an auction sale in execution of a decree. No. 825, W. C. 20th September, C. A. 18th October 1833, ... II. 127

No. 998, C. C. 16th January 1835, ... II. 199

6. Mere priority of date, gives no preference to a decree. All decrees under which process of attachment has been issued, provided they are dated previous to the distribution of the deposits, entitle the holders to share in proportion to the amount of their claims; with an exception of cases in which a *bonâ fide* mortgage of the deposit may exist in favor of any particular claim. No. 935, W. C. 31st July 1834, C. C. 22d February 1835, ... II. 202

7. All decrees under which process of attachment has been issued, provided they are dated previous to distribution, entitle the holders to share in proportion to their claims, [exceptions being allowed in cases of *bonâ fide* mortgage,] in preference to claimants under decrees in which no such process has been issued. No. 1056, C. and W. C., 21st October 1836, II. 287

8. A decree holder purchasing property sold in satisfaction of his decree, may be permitted to give his receipt for the amount of his claim in payment of so much of the purchase money: provided that the arrangement do not interfere with equal claims of other parties, and that, as respects delivery of possession of the property sold, the sale rules be observed in regard to him, as would be applied to other purchasers. No. 1187, C. and W. C., 30th November 1838, III. 54

9. A decree holder purchasing his debtor's property at a public sale by the collector for a higher sum than the amount of his decree, must deposit 15 per cent. on the whole amount of the purchase money, or the balance in full; as, should the balance not be paid, the sale falls to the ground, and the purchaser forfeits the purchase money or the sum total paid by him. No. 1350, C. C. 15th July, W. C. 5th August 1842, ... III. 93

VI. Confinement of Debtors in execution of decrees.

1. An application is required for the confinement of a party under civil process; and in the first instance, after demand made, the process should be executed upon the property of the person from whom the amount is due, and the property of his surety. No. 21, 25th July 1806, ... I. 6

2. When a debtor confined in execution has executed a *kutbundee* in court, it may be enforced; and if the party or his surety allege, that any payment has been made, he should be allowed to prove it. No. 44, 7th December 1808, ... I. 11

3. The rule in Clause 7, Section 45, Regulation XXIII. 1814, "that no one shall be liable to be imprisoned in satisfaction of a decree for any sum not exceeding 64 rupees beyond the period of six months," does not apply to a person confined for arrears of *abcaree* tax due to Government. No. 302, 28th May 1819, ... I. 121

4. A sudder ameen executing a decree, has no power to order the imprisonment of a debtor, or of a person guilty of resistance of process; but must refer the matter for the orders of the judge. [See Section 7, Regulation VII. 1832.] No. 451, 30th March 1827, ... I. 190

5. It is incumbent on the civil courts to release a debtor, with the consent of the creditor, on the execution by the former of a *kutbundee* No. 569, 23d July 1830, ... I. 238

6. The execution of a *kutbundee* for a larger sum than 64 rupees, including interest and costs, will not deprive the debtor of his right to be released under Section 45, Regulation XXIII. 1814, after he has been confined for six months in execution of a decree for a sum not exceeding 64 rupees. No. 569, 23d July 1830, ... I. 123

7. A principal sudder ameen cannot confine a debtor without the sanction of the judge. No. 947, W. C. 1st May, C. C. 22d May 1833, ... II. 209

8. Though the rule contained in Clause 7, Section 45, Regulation XXIII. 1814, providing that no one shall be confined for a period exceeding six months, for a sum not exceeding 64 rupees, applies only to debtors confined under decrees of court, it is competent to the judge to use his discretion in releasing a person confined in default of payment of fine; due regard being had to the circumstances under which the fine was imposed. No. 964, W. C. 10th July, C. C. 31st July 1835, ... II. 220

9. The judge who issued the process of arrest can alone order the release of a prisoner, and not the judge in whose district he may have been arrested. No 1000, W. C. 5th February, C. C. 11th March 1836, ... II. 245

10 A debtor having been arrested was released after having been kept seven days in custody, because his subsistence money was not deposited, held that as he had not been confined in jail, the circumstance

would not bar his further arrest. No. 1090, C. C. 19th May, W. C. 2d June 1837, ... II. 308

VII. Objections to execution of decrees, and Appeals from Orders regarding Sales.

1. A judge executing the decree of a provincial court is at liberty to investigate and decide the claims of a third party to the property attached, or may refer the matter for the orders of the provincial court. [*Obsolete.*] No. 308, 19th November 1819, ... I. 125

2. The appeal from the order of a register fixed at other than the sudder station, in execution of a moonsiff's decree, and special appeals from the orders of a sudder ameen in such cases, lie to the zillah judge, and not to the provincial court. [*Obsolete.*] No. 355, 26th September 1823, ... I. 147

3. The Sudder Dewanny Adawlut held that a judge might uphold a lease granted by the court of wards as guardians of the estate of an alleged adopted son, though the adoption had been set aside by a decree of court, supposing there to be no collusion. No. 540, 26th February 1830, ... I. 229

4. The circumstance of an estate being recorded in the collector's records in the name of another person than him against whom execution is prayed, is not sufficient to warrant the collector to decline to bring the same to sale, nor is the plea that the collector's office does not furnish sufficient information, or that no division can be made of the attached talooks, for the collector is bound to obtain the required information and make the requisite division, or satisfy the court that it cannot be done. No. 648, 2d July 1831, ... II. 15

5. Claims to property about to be sold by the collector in execution of decrees, are solely cognizable by the court ordering the sale. When such are preferred to the collector, he should forward them to the court for decision, *staying his proceedings until the final orders of the court are received. (The words in italics were rescinded by the C. O. S. D. A. 4th September* 1840, ... II. 104

6. A single judge of the Sudder Dewanny Adawlut is competent to alter or reverse the orders of the zillah judge in execution of the zillah judge's decree; such proceeding not being considered to come within the provisions of Clause 4, Section 2, Regulation IX. 1831. No. 804, W. C. 19th July, C. C. 16th August 1833, ... II. 110

7. The expression "or objections made to the sale of property within the period of the proclamation," in the Circular Order, Sudder Dewanny Adawlut, 19th July 1833, is considered equally applicable to defendants as to other individuals who have objections to advance to the disposal of property advertised for sale by public auction in satisfaction of a decree. No. 844, W. C. 22d November, C. C. 6th December 1833, ... II. 142

8. The Circular Order, Sudder Dewanny Adawlut, 19th July 1833, does not allow a newspostponement on the rejection of every petition objecting thereto, but merely prohibits the order for sale from being carried into execution for three months, i. e. until the expiration of the period prescribed for appealing, with a view to enable the parties dissatisfied with it to prefer their appeal within that period. No. 877, C. C. 27th March 1834, ... II. 166

9. No other authority than the court which issued the process can release an individual from the process of arrest, *or his property from attachment and sale.* [*By Circular Order, Sudder Dewanny Adawlut, 8th May* 1840, *it was ruled that the judge of the district in which the property is situate, and not the judge ordering the sale, should pass the necessary orders regarding the attachment and sale thereof.*] No. 1000, W. C. 5th February, C. C. 11th March 1836, ... II. 245

10. When claims or objections are preferred to the judge *before the sale* and rejected, the sale must be postponed for three months from the date of the judge's order. When objections are preferred *after the sale*, and rejected, and the sale confirmed, the purchase money must be kept in deposit for three months from the date of the judge's order rejecting the petition and confirming the sale. If no claims are preferred before the sale, it may take place in thirty days; and if after the sale no objections are preferred within thirty days, the purchase money may in like manner be paid to the decree holder at the expiration of that period. No. 1027, C. C. 29th July, W. C. 15th July 1836, ... II. 267

11. Courts executing decrees are competent summarily to set aside leases which have been shewn to be fraudulent, leaving the party dissatisfied to appeal, or institute a regular suit to recover possession of his alleged rights. No. 1059, 2d December 1836, II. 288

12. Miscellaneous orders passed in execution of decrees carrying into effect the original intention of the court, must be considered as final, and not constituting a new ground of action. No. 1129, W. and C. C. 9th February 1838, ... III. 4

13. Appeals from orders passed by principal sudder ameens under Clause 6, Section 3, Regulation VII. 1825, in execution of their own decrees in suits above 5000 rupees, lie direct to the Sudder Dewanny Adawlut. No. 1148, W. C. 27th April, C. C. 11th May 1838, ... III. 12

14. A decree having been obtained by A against B, the latter, to evade execution thereof, got his relation C to file a fictitious suit, on which he, three days after, put in an *ikbal-dawee*, acknowledging the fictitious debt, and pledging the whole of his property in satisfaction of it; on the strength of which a decree was the same day passed in favor of C. Held that the aggrieved decree holder should be referred to a regular suit against the colluding parties for any damages he might have sustained by their fraudulent

proceedings, pending the issue of which the whole of the property in question might be attached and the interest of the decree holder protected. No. 1299, C. C. 4th June, W. C. 25th June 1841, ... III. 80

VIII. Power and duty of Collectors in execution of decrees.

See "Collectors," Nos. 12, 16, 17, 19, 20, 21, 25, 40, 41.

IX. Power and duty of Native Judges in execution of decrees.

See "Moonsiffs, V." passim.
" "Principal Sudder Ameens," Nos. 2, 21.
" "Sudder Ameens," Nos. 6, 24.

X. Interest and Mesne Profits.

See "Interest and Mesne Profits," passim.

XI. Miscellaneous subjects.

1. Applications for the execution of awards of private arbitrators are to be received and enforced under the rules applicable to summary process. No. 225, 31st October 1815, ... I. 74

2. When a person has obtained a decree against a debtor,—if no property of the latter be forthcoming, he has an equitable right to attach property receivable under a decree passed in favor of the debtor, and to cause execution, unless good and sufficient cause against, the enforcement be shewn by the party against whom such judgment has been passed. No. 293, 9th July 1818, ... I. 115

3. The courts are not required to execute decrees of the Supreme Court, unless a writ directing execution be issued by that Court. No. 567, 23d July 1830, ... I. 237

4. No decree can be executed against a third person, who was not a party thereto. No. 744, 21st December 1832, ... II. 70

5. A decree of the Calcutta court of requests is to be executed by the judge of the 24-Pergunnahs in the same manner as decrees of other courts: and the state of the case is not altered by the fact of both parties being Europeans. No. 932, 6th February 1835, ... II. 201

6. A obtained a decree awarding him possession of a village wrongfully included by B in his talook. B appealed, but his talook having been sold for public revenue, he neglected to carry on his appeal, which was dismissed. B having subsequently obtained a reversal of the public sale, it was held that A might obtain possession of the village in execution of his decree without a new suit. No. 999, C. C. 8th January, W. C. 5th February 1836, II. 244

7. The decisions of His Majesty in Council are executed through the judges of the districts in which the cause of action arose, who are to be guided by the same rules as are prescribed for the execution of other decrees. The party who has obtained the decree, having been kept out of his land pending the appeal, will be intitled to mesne profits without instituting a new suit. No. 1066, W. C. 13th January, C. C. 17th February 1837, ... II. 293

8. When the holder of the decree of a foreign court, or of a court in an extra regulation district, wishes to execute it, against property in one of the regulation districts, he must institute a suit in the cours of that district, on the decree passed in his favor in the other court. No 1133, 16th February 1838, ... III 5

9. On the transfer of a decree from the decree holder A, to another B, it is essential to the recognition of such a transfer by a civil court, that A the transferring party should certify, in person, or by *mukhtar* appointed for that special purpose, either verbally or by petition, his having made the transfer to B, whose name should then be inserted in the place of that of the original decree holder in the execution of decree process. No. 1341, W. C. 20th May, C. C. 17th June 1842, ... III. 91

EXECUTION OF SENTENCES OF MILITARY COURTS.

1. A magistrate cannot proceed against a witness who refuses to be sworn before a court martial under the provisions of Regulation IV. 1820. *(Superseded by Section 6, Act XI. 1841.)* No. 401, 18th August 1826, ... I. 168

EXEMPTION FROM ARREST.

See "Arrest," Nos. 2, 3, 4, 6, 7.

EXEMPTION FROM LABOR.

1. Prisoners detained on a requisition of security for good conduct cannot be exempted from labor by the payment of a fine. No. 881, C. C. 18th April, W. C. 16th May 1834, ... II. 169

2. Labor is commutable to a fine on a conviction of knowingly issuing forged documents, &c. No. 899, W. C. 15th September, C. C. 3d October 1834, II. 182

3 The power vested in a magistrate by Section 3, Regulation VIII. 1828, of awarding labor to a prisoner convicted of affray unattended with aggravating circumstances, during the original term of imprisonment, must be considered to extend equally to the further period of imprisonment which the prisoner may be required to undergo, in default of paying the fine which the magistrate may think fit to impose; and the labor in both cases is commutable to a fine. No. 972, W. C. 7th August, C. C. 4th September 1835, ... II. 224

4. On a conviction of privity to burglary, labor is commutable to a fine. No. 1178, C. C. 7th September, W. C. 5th October 1838,..... III. 80

5. A prisoner sentenced to imprisonment for escaping from jail is entitled to exemption from labor, on payment of a fine, for the period of his confinement for that specific offence. No. 1215, C. C. 10th May, Government 1st August 1839,..... III. 52

6. In cases in which a magistrate may sentence to a term of imprisonment with labor and a fine, commutable to a further period of imprisonment, it is competent to him to make the labor redeemable by a fine for both periods. If labor was not awarded for the first period, it would not of course be awarded for the second. No. 1264, W. C. 6th December 1839, C. C. 3d January 1840, ... III. 69

EXHIBITS.

See "Stamps, V." *passim.*

EXPARTE DECISIONS.

See "Practice," Nos. 1, 4.

FALSE OR FICTITIOUS NAMES.

See "Benamee Purchasers," No. 1.
" Conduct of Trials," No. 12.

FERRIES.

1. A person holding a farm of a public ferry is not authorized to underlet it without the sanction of the magistrate; a summary suit by such farmer against his *kutheenadar* would not be cognizable by the collector under Regulation VIII. 1831 In such cases, mode of proceeding is laid in Section 10, Regulation VI. 1819. No. 713, 24th August 1832, II. 55

2. Leases and counterparts [*pottahs* and *kubooluts*] granted to and taken from farmers of ferries need not be written on stampt paper. No. 1111, C. C. 27th October, W. C. 22d September 1837,..... II. 336

3. The magistrates' acts in the management of ferries are subject to the control of the superintendant of police, and it is not competent to the session judge to receive appeals from the magistrates' orders in such matters. No. 1144, C. and W. C. 6th April 1838,..... III. 11

4. Held that the plying of boats by parties contrary to order in the vicinity of a Government ferry, is a misdemeanor punishable by a magistrate under the general powers vested in him by Section 19, Regulation IX 1807. No. 1305, C. C. 16th July, W. C. 20th August 1841, ... III. 82

FINES.

1. A magistrate cannot fine a collector for disobeying his orders: the rule in Section 36, Regulation XIV. 1793 and corresponding enactments being restricted in its operation to decrees and orders of the civil courts of judicature. No. 364, 23d April 1824, ... I. 151

No 414, 17th March 1826,..... I. 173

2. The fine for illicitly cultivating salt clears, must be commuted, if not paid, to a period of imprisonment. No. 388, 3d June 1825, ... I. 160

3. It is competent to a session judge to fine an officer of the magistrate's establishment guilty of negligence or disrespect while in attendance at the sessions. No. 882, C. C. 18th April, W. C. 16th May 1834, ... II. 169

4. The power of a session judge to fine is unrestricted as to amount, except when it is defined by a specific regulation [as in case of Dhurna by Regulation VII. 1820.] No. 959, 19th July 1835, ... II. 217

5. The judge is competent to use his discretion in releasing a person confined by order of a civil court in default of payment of a fine, due regard being had to the circumstances under which the fine was imposed. No. 964, W. C. 10th July, C. C. 31st July 1835, ... II 220

6. When the civil judge has confirmed or modified the order of a native judge imposing a fine, he may refer his order to the native judge for execution under the rules prescribed for the execution of decrees. [*But see Circular Order, Sudder Dewanny Adawlut, 16th September 1842, and Sections 3 and 4 Act VI. of* 1843.] No. 1020, C. C. 1st July, W. C 22d July 1836,..... ... II. 263

7. If a collector on being required by the judge under Section 15, Regulation VIII 1831, to transfer the record of a case pending before him, refuse to do so, the judge is competent to proceed according to Section 36, Regulation XIV. 1793. No 1094, C. C. 23d June, W. C. 14th August 1837, ... II. 311

8. Fines imposed for frivolous, vexatious, or groundless suits are leviable by the commitment of the person fined to close custody until the fine is paid; but in cases of litigious appeals, the amount may be realised under the rules applicable to the execution of decrees of court. No. 1096, C. and W. C. 7th July 1837, ... II. 312

9. It is not optional to the civil courts to remit the fine declared by Section 18, Regulation X. 1829, to attach to parties filing papers contrary to the provisions of that enactment. No. 1120, C. C. 15th December 1837, W. C. 12th January 1838,... II. 332

10. The fines imposed for a breach of the salt laws are commutable to a term of imprisonment. If the fine be paid before the defendant is committed to jail, the case is concluded: if forthcoming after confinement, the case is also disposed of and the prisoner must be released: if the fine be not paid, the person fined must undergo the prescribed period of imprisonment in commutation, and the levy of the fine is then barred, that is, the fine is not demandable after the imprisonment has been undergone and the party

released. No. 1135, C. and W. C. 2d March 1838,..... III. 7

11. A zillah judge cannot impose a fine on an appellant under Section 3, Regulation XIII. 1796, in a miscellaneous case, that rule not being applicable to such appeal. No. 1138, C and W. C. 6th March 1838, ... III. 8

12. The fine authorized by Section 21, Regulation XII. 1807, should be continued, if not paid, to imprisonment for a limited term: and in the absence of the zumeendar, the actual manager of the estate should be proceeded against, in default of compliance with the requisitions of the law cited. No. 1150, C. C. 27th April, W. C 11th May 1838,.....III. 14

13. A magistrate cannot fine *mushajees or shroffs* for demanding illegal *battas* on Company's rupees. No. 1156, 9th June 1838,..... III. 17

14. Police officers are not authorized to levy fines on account of cattle trespassing. No. 1176, C. C. 21st September, W. C. 31st August 1838,..... III. 31

15. It is considered objectionable to allow the native judges to impose fines on collectors for not conforming to their orders. When their orders are not carried into effect, they should report the circumstances of the case to the judge, leaving him to take such steps in the matter as he may deem proper consistently with the Regulations. No. 1193, W. and C. C. 21st December 1838,..... III. 40

16 A bidder at a public sale who has been fined by a collector, cannot institute a regular suit against that authority to obtain a return of the fine, supposing it to have been levied by distress or otherwise No. 1201, C. C. 15th February, W. C. 8th March 1839,..... III. 44

17. A magistrate has no power to mitigate the fine of 50 rupees for the offences against the post-office described in Sections 9 and 10, Act XVII. 1837; and the fine, if not paid, must be levied under the rules of Act II. 1839. No. 1204, W. C. 15th March, C. C. 1st April 1839, ... III. 45

18. The fine imposed under the provisions of Section 25, Regulation IV. 1793, may be levied by the same rules as are applicable to the execution of decrees of court, i. e. by the sale of the property of the individual upon whom the fine was imposed, or by the imprisonment of the individual. No. 1214, C. C. 3d May, W. C. 24th May 1839,..... III. 52

19. It is imperative on a magistrate under the provisions of Act XI. 1835, [regarding printing presses,] to sentence any person convicted of a breach of that law to imprisonment in addition to a fine. The fine is not commutable to a further period of imprisonment, but must be levied according to Act II. 1839. No. 1225, C. C. 11th February, W. C. 11th March 1839, ...III. 344

FISHERIES.

See "Dispossession of disputed possession, summary process of the criminal courts in cases of," No. 14.

FOREIGN COURTS, DECREES OF

See "Execution of Decrees, XI." No. 8.

FOREIGNERS, EUROPEAN.

See "European British Subjects," *passim.*

FOREIGNERS, NATIVE.

See "Foreign territories, crimes committed in," *passim.*

FOREIGN TERRITORIES, CRIMES COMMITTED IN.

1. A native, born in Scharunpore, had resided for the last eight or nine years in the Lucknow territory; being charged with assisting in resisting our police in the Lucknow territories, he was considered to be a native of the second class, described in Regulation VIII, 1813. No. 703, W. C. 9th June, C. C. 6th July 1832, ... II 48

2. If persons, not being native British subjects, come from an independant state into the British territories and, having committed robbery or other heinous crime, escape beyond the boundary, such persons, if given up by the foreign state, can be tried by our courts No. 533, 18th December 1829, ... I. 226

3. If a native subject of the British Government, accused of a crime committed beyond the Company's territory, make his escape beyond the boundary and be delivered up, a reference to Government is necessary before he can be tried. No. 533, 18th December 1829,..... I 226

4. If a person, not a British subject, accused of a crime committed within the Company's territories, be seized within those territories, he can be tried without reference to Government. No. 533, 18th December 1829, ... I. 226

5. Foreigners who entered the British territory, and carried off a British subject, may be tried by the magistrate of the district in which the crime was committed. An affray occurred in the foreign territory in consequence of this abduction: such of the party engaged who were British subjects, would with the permission of Government be triable by our courts; the foreigners would be subject only to the laws of the state where the offence was committed. No. 926, W. C. 16th January, C. C. 31st January 1835, ... II. 197

6. A magistrate is competent to apprehend the subject of a foreign state, charged with murder or robbery, who may take refuge in the British territory. No. 929, 20th January 1835, ... II. 199

FOREST, RIGHT OF, OR 'BUNKER.'

See "Dispossession or disputed possession, summary process in the criminal courts in cases of," No. 21.

FORFEITURE OF LAND AND FINES FOR RESISTANCE OR EVASION OF PROCESS.

1. Section 12, Regulation IV. 1793, and Section 18, Regulation III. 1803, do not authorize or intend a sequestration of land until the judgment of forfeiture is confirmed. No. 2, 2d May 1799,..... I. 1

2. The Nizamut Adawlut authorized the attachment of lands adjudged by the magistrate liable to forfeiture for harbouring dacoits, under Section 14, Regulation IX. 1808. No 46, 24th May 1809, ... I. 11

3. Proprietors, of *lakheraj* land or *durpulnee talookdars* are not liable to the forfeiture of their lands for harbouring dacoits, &c. under Section 4, Regulation VI. 1810, the provisions of which apply exclusively to *sudder zumeendars, talookdars*, and farmers. No. 53, 26th July 1810, ... I. 16

4. The appeal from the decision of a zillah judge decreeing the forfeiture of an estate for resistance or evasion of process, must be received as regular: and the provincial court may stay execution of the decree under the rules of Section 1, Regulation XIII. 1808. No. 198, 8th March 1815, ... I. 62

5. The zillah judge may direct the Government pleader to appeal specially from the decision of the provincial court revising his decision, adjudging the forfeiture of land in consequence of an affray attended with homicide by the parties claiming it. [*See Act IV. of* 1840.] No. 342, 6th July 1821, ... I. 140

6. When land has been adjudged forfeited to Government, a report should be made for final orders as to its disposal. No. 342, 6th July 1821,..... I. 140

7. In a suit by the collector for the forfeiture of an estate for resistance or evasion of process, the amount of action must be calculated on the *sudder jumma* of the estate for the confiscation of which the collector sues; and not on the amount of the arrear due. No. 386, 27th May 1825, ... I. 159

8. Decisions passed by the zillah judges awarding forfeiture of lands, or fines, for resistance or evasion of process, are appealable, after the extension of Regulation V. 1831, to the district, to the Sudder Dewanny Adawlut, without reference to amount of the annual *jumma*, produce or fine. No. 760, C. C. 12th April, W. C. 10th May 1833, ... II 94

9. The Construction 386 (see No. 7) is applicable to suits for fines for resistance or evasion of process. The action cannot be laid at the amount of the fine, as it rests with the court on a determination of the case to fix the amount of the fine No. 808, W. C. 2d August, C. C. 30th August 1833,..... II. 114

FORGERY.

1. The Construction No. 52 is superseded by the rules of Regulation XVII. 1817. No. 52, 4th November 1809, ... I. 12

2. Commitments for forgery are not restricted to the civil courts. [*This Construction is superseded by No. 454, No.* 6.] No. 969, 16th December 1813, ... I. 41

3. The rule in the concluding part of Section 6, Regulation IV. 1793, which provides for the return of rejected documents, does not apply to those which the civil court may consider to be forged, but only to those which the court may refuse to file as not being relevant, or not produced in time, or for other good and sufficient cause. No. 139, 16th December 1813,..... I. 41

4. Issuing forged deeds, though punishable under the Mahomedan law, is not liable to the penalties prescribed for forgery by Regulation II. 1807. [*But Section* 10, *Regulation XVII* 1817, *prescribes a specific punishment for this offence.*] No. 195, 7th February 1815,..... I 60

5. A prisoner having been acquitted by the court of circuit of uttering a forged note, knowing it to be forged, the magistrate cannot detain the prisoner on the plea of having a forged note in his possession, the not having been declared a punishable offence by any regulation. No. 361, 26th March 1824, ... II. 180

6. A magistrate cannot entertain a charge of forgery founded on a document exhibited in a civil court, unless the judge or judges of that court shall have directed a prosecution for forgery, or expressly declared the party aggrieved by such document at liberty to prosecute. No. 434, 13th July 1827, ... II. 191

7. In a case of forgery arising out of a civil suit tried by a sudder ameen, if the suit be pending before the judge in appeal, he may commit the party for forgery, if he see sufficient grounds for doing so. If the appeal have been decided, the alleged forgery can only be brought under the judge's cognisance by his obtaining the sanction of the Sudder Dewanny Adawlut to review the judgment. No. 572, 27th August 1830, ... I. 239

8. If the sudder ameen in the first instance thought the document was a forgery and that the party who filed it knew it to be so, he ought to have sent the case to the judge, who would have been competent to proceed against the person or persons he might have deemed guilty, in like manner as if the suit had been instituted and pending before himself No. 572, 27th August 1830, ... I. 239

9. The words "any civil proceeding whatever" in Clause 2, Section 14, Regulation XVII. 1817, include miscellaneous cases; a forgery therefore in a miscellaneous case may be committed by the civil judge and tried by the commissioner. No 858, C. C. 11th October, W. C. 15th November 1833,..... II. 132

10. "*Measurement papers*" must be considered as coming within the denomination of "deeds and papers," the fraudulently publishing as true, or otherwise fraudulently giving or attempting to give effect to which, knowing the same to be false, is declared by Section 10, Regulation XVII. 1817, to subject the

offender on conviction to the penalties prescribed in that section for forgery. No. 1061, C. C. 9th December, W. C 23d December 1836, ... II. 289

11. Opening the Government dawk wallet, and extracting the telegraph and altering the hour of arrival and despatch of the Government mail with a view to defraud Government, held to amount to forgery as described in Clause 3, Section 4, Regulation II. 1807. No. 1099, C. C. 21st July, W. C. 18th August 1837, ... II. 314

FRAUD.

1. It is not competent to a civil judge to commit any party in a civil suit or other person on a charge of fraud; he should make the case over to the magistrate with a view to that officer's investigating the charge and disposing of it himself, or, if committable under the regulations, committing it at his discretion for trial at the sessions. No. 1221, W. C. 31st May, C. C. 5th July 1839, ... III. 54

No. 1225, W. C. 4th June, C. C. 12th July 1839, ... III. 56

FURRUCKABAD, NUWAB OF.

1. The Constructions Nos. 162, 785, and 843, have reference to cases referred to the Nuwab of Furruckabad according to the provisions of Section 8, Regulation II. 1803. No. 162, 26th May 1814, I. 50

No. 785, W. C. 26th April, C. C. 31st May 1833, ... II. 97

No. 843, W. C. 8th November, C. C. 29th November 1833, ... II. 138

FUTWA.

1. A *futwa* must be taken on the trial, before the court of circuit, of convicts for escape. No. 47, 13th June 1809, ... I. 11

2. Though a *futwa* is not required on a trial on the charge of having belonged to a gang of *thugs*, it should be taken when a prisoner is tried on a specific charge of murder and *thuggee*, unless the prisoner be tried under the provisions of Regulation VI. 1832. No. 1074, C. C. 10th February, W. C. 27th January 1837, ... II. 298

GAMBLING.

1. A magistrate being in doubt whether persons found playing in gambling houses are punishable, was directed to take a *futwa* from his law officer and proceed according to his exposition of the Mahomedan law. No. 891, C. C. 18th July, W. C. 5th September 1834, ... II. 177

GANG ROBBERY.

1. Clubs and sharpened bamboos should be considered as *arms* within the meaning of Regulation II. 1825; and the case is referrible to the Nizamut Adawlut, when the gang is proved to have consisted of two or more persons, any one individual of whom may have been armed. No. 399, 12th August 1825, ... I. 167

2. Dacoity or gang robbery is defined by Clause 1, Section 3, Regulation LIII. 1803, to be when any person or persons "shall, in the day, or in the night, go forth with any offensive weapon, *or in a gang with or without an offensive weapon*, with the criminal attempt of committing *robbery*, and shall, by force or intimidation, *rob* or *attempt to rob* any person or persons:" while by Clause 2, Section 4 of the same Regulation, the mere act of going forth with a gang for the purpose of committing *robbery* is declared punishable with imprisonment not exceeding seven years. No. 750, 4th January 1833, ... II. 76

GENERAL WARRANTS.

1. The issue of general warrants is illegal. No. 766, 8th March 1833, ... II. 86

GHAUT MANJEES.

1. The local authorities should not interfere with ghaut manjees further than to refuse to recognise their claims to make exactions, and promptly to punish every attempt illegally to enforce those claims, and especially the detention of boats without the consent of the owners and other acts founded on pretended authority. No. 606, 11th November 1831, ... I. 251

GODENA.

1. The Court authorized the magistrate not to inflict *godena* on certain prisoners sentenced to imprisonment for life, in consideration of their circumstances and rank in life. No. 184, 19th August 1813, I. 39

GOMASHTEH.

1. A managing gomashteh, under the general and known powers vested in him, may institute and defend suits and carry on all concerns connected with the *hotee* of which he is the ostensible representative, without producing any authority from his principals for so doing. No. 75, 31st January 1811, ... I. 17

2. A gomashteh of an indigo planter is not considered to be a domestic servant or "workman" within the meaning of Section 5, Regulation VII. 1819. No. 924, C. C. 26th December 1834, W. C. 23d January 1835, ... II. 193

3. The provisions of Section 20, Regulation VII. 1799, are applicable to the gomashtehs and mohurrirs of indigo planters. Note on No. 924, 2d January 1835, ... II. 196

GOVERNMENT AND ITS OFFICERS, SUITS AGAINST.

1. A judge may entertain a suit brought by a minor and his guardian against the collector for having, under the authority of the Court of Wards, disposed of the minor's estate: the petition of plaint should in the first instance be forwarded to the Board of Revenue under Regulation II. 1814. No. 410, 16th December 1825, ... I. 172

2. Suits in which Government or its officers are parties are referrible, under Act XXV. 1837, to principal sudder ameens and other sudder ameens. No. 1112, W. C. 10th November 1837, C. C. concurred. ..... II. 327

3. Petitions of complaint preferred agreeably to the provisions of Regulation II. 1814, against the officers of Government in their official capacity, must be written, when first presented, on stamp paper of the full value in like manner with other plaints. No. 1116, W. C. 9th December 1837, C. C. concurred. ..... II. 330

GOVERNMENT PLEADER.

See "Pleaders in the Civil Courts," Nos. 11, 13.

GUARDIANS AND MINORS.

1. The sillah judge may appoint a guardian of a minor alleged to have been adopted by a widow, though the collateral heirs of the husband may deny the adoption, provided the minor claim to be a sharer in a joint estate paying revenue to Government. [*See Construction* 912, No. 17.] Possession on the part of the minor should be maintained or otherwise, on the opposite party contesting the claim by a suit, as in other cases under Regulation V. 1799. No. 310, 1st January 1820, ... I. 127

2. *A surbeeakar*, or manager, under the Court of Wards should, in all cases affecting the estate, real or personal, of the minor, or disqualified landholder, both sue and defend in the civil courts, under the instructions he may receive from the Court of Wards; but as the interests of Government cannot be ordinarily supposed to be concerned in such suits, he [the *surbeeakar*] has no more right to command the aid of the Government pleader than any other individual plaintiff or defendant. No. 335, 2d February 1821, I. 137

3. An executor or guardian of a minor not under the Court of Wards must, during the minority, stand in the place of the minor, and be subject to all the rules of suit and defence to which the minor would be subject were he not a minor. No. 335, 2d February 1821, ... I. 137

4. When objections exist to conferring the guardianship on the next of kin, the judge should appoint some person of respectability to act as guardian of the minor—so also in the event of the minor having no relations. The guardian so appointed may appoint a *vakeel* to carry on a suit against the minor's own father. No. 398, 5th August 1825, ... I. 166

5. A minor, through his guardian, may sue the collector, for having, under the authority of the Court of Wards, disposed of the minor's estate. The judge should refer the plaint, under Regulation II. 1814, to the Board of Revenue, and proceeded to the trial of it under Clause 4, Section 3 of that Regulation, in the event of its not being deemed requisite by that authority to direct redress to be afforded. No. 410, 16th December 1825, ... I. 172

6. No appeal lies to the provincial court from an order of a sillah judge for appointing a guardian, such order is appealable only to the Sudder Dewanny Adawlut. [*Provincial court abolished.*] No. 596, 24th June 1831, ... I. 249

7. The clandestine marriage of a minor female, placed under a guardian appointed under Regulation I. 1800, is not punishable by the criminal courts. No. 637, 27th May 1831, ... II. 9

8. *Bafutoonissa* adopted *Moomtazoodeen*, in 1225 B. S., and made over her estate to him by deed of gift, retaining possession as manager for her adopted son through *Hamud Meeam*, her *gomashteh*, who after her death continued in possession till he died in 1236 B. S., when *Nuzzuroodeen*, brother of *Bafutoonissa*, took possession in right of his daughter, *Uzmutoonissa*, who had been married to *Moomtazoodeen* by *Bafutoonissa*, in virtue of a deed of gift alleged to have been executed on his marriage by *Moomtazoodeen* with the consent of *Bafutoonissa*. *Moomtazoodeen* being a minor, *Gour Gopal* was appointed his guardian at the instance of his brother *Akhakoolla*, and claimed the estate under the original deed of gift of *Bafutoonissa*. The Court, presuming *Nuzzuroodeen* to have taken possession on the death of the *gomashteh*, were of opinion that under Section 4, Regulation V. 1799, his possession should not be disturbed, unless, on the institution of a regular suit by the opposite party, he should be unable or neglect to give security which in that case would be required of him. No. 651, 5th August 1831, ... II. 15

9. The judge having removed the guardian of Moomtasoodeen [in the preceding case,] was informed that he had no authority to do so, without the sanction of the Court. They did not consider the reasons assigned by him sufficient to warrant the removal; for, though the possession of the estate, for the protection of which he was appointed, was in the hands of the opposite party, the claim of the minor thereto remained to be decided, and the appointment of the guardian might be necessary to bring forward and prosecute a suit in the civil court in the regular manner. The Court therefore ordered that the guardian should be restored to office. No. 666, 6th January 1832, II. 30

10. The guardian of a minor being his representative, is entitled to recover the minor's share of the proceeds of the estate, if managed by a *surbeeakar*,

and the zillah judge has no authority to interfere with him in the disposition of the minor's property. No. 654, 19th August 1831, ... II 17

11. The estate of a minor being a joint undivided estate, the judge should, on the application of the minor's mother, appoint a guardian and report his nomination for the confirmation of the Court. No. 663, 16th December 1831, ... II 29

12. Guardians and managers appointed under Regulation I. 1800, must be left to exercise their own judgment as to managing the estate of the minor committed to their care. No. 663, 16th December 1831, ... II 29

13. The Court being of opinion that the Regulations do not authorise the judge to entertain an establishment to manage the accounts of the estates of certain orphan wards of the court, and deeming the establishment unnecessary, annulled the judge's order. No. 682, 16th March 1832, ... II. 37

14. The civil courts are not expected to call upon guardians, appointed by them, to deliver up their accounts for their inspection, nor are they competent to exercise any active interference in the management of the property of the ward, No 720, W. C. 21st September, C. C. 28th December 1832, ... II. 57

15. On the receipt of credible information against the character of the guardian, shewing him to the court's satisfaction to be unfit for the situation, the court is competent to make enquiry into the matter and take measures for his removal. No. 720, W. C. 21st September, C. C. 28th December 1832, ... II. 57

16. For the recovery of any monies or property, which on investigation the guardian may appear to have embezzled, the court is not empowered to interfere except on the institution of a regular suit. No. 720, W. C. 21st September, C. C. 28th December 1832, ... II. 57

17. The judge, doubting whether a guardian could be appointed for a minor sharer of an estate the rent of which was paid to the zumeendar, was informed that there was nothing in Regulation I. 1800, which restricts its application to the minor heirs of joint undivided estates paying revenue immediately to Government. No. 912, 24th October 1834, .. II. 187

18. The guardian of a minor having resigned, the Court ordered that the security bond furnished by him on undertaking the trust, should be retained in the custody of the zillah court until the lapse of 12 years from the resignation of the trust, or from the date of the minor's attaining his majority, unless the minor on coming of age should consent to its being restored to the parties concerned. No. 948, 1st May 1835, ... II 210

GUARDS

See "Neglect of Duty," *passim*.

HAATS.

1. The magistrate of Allahabad was informed that on any new dispute arising regarding the right to establish *haats*, he should be guided by the Circular Orders, Nizamut Adawlut, 10th December 1830; but that he must uphold a former summary order of the Benares court of circuit, until the same was set aside by a regular suit. No. 630, 10th June 1831,... II. 11

2. A similar order passed summarily by two judges of the Sudder Dewanny Adawlut, fixing the days on which a *haat* in Sylhet was to be held, was declared in full force till set aside by a regular civil suit, notwithstanding the Circular Orders, Nizamut Adawlut, 10th December 1830, which refers only to new disputes regarding *haats*, with which the magistrate should not interfere unless where it may be necessary to prevent a breach of the peace. No. 937, 20th March 1835, ... II. 204

IHBEH-BIL-EWUZ.

See "Stamps, II," No. 14.

HINDU LAW.

1. The local position of a Hindu family does not necessarily determine the law by which their disputes ought to be decided. No. 1007, C. C. 22d April, W. C. 13th May 1836, ... II. 251

HOONDEES.

See "Stamps, II," Nos. 1, 7, 20.

IJAREHDAR.

See "Jotedar."

ILLEGITIMATE CHILDREN.

1. Illegitimate children are considered as of the same country as their mothers. No. 806, W. C. 26th July, C. C. 6th September 1833, ... II. 13

2. The illegitimate son of an European British subject by a native mother can be tried by the local courts on a charge of adultery: but a married woman, the legitimate child of a British father, is not amenable to the local courts on a similar charge preferred against her by her husband. No. 978, W. C. 11th September, C. C. 9th October 1835, ... II. 228

3. The evidence of the mother of an illegitimate child against the alleged father is *prima facie* good as far as it goes: but it should be sifted and weighed as any other testimony, and tested, as far as practicable, by any circumstantial evidence that may offer. The result must depend on the belief or otherwise reposed in it by the magistrate. No. 1163, C. C. 3d August, W. C. 13th July 1838, ... II. 20

INADEQUACY OF PRICE.

1. A judge in selling property in execution of a decree, is competent to take every precaution to prevent the sale of property for less than its marketable value; but after a sale has been once closed, and a bidder been given to understand that he is the purchaser for the sum offered, the property cannot be offered for resale on the ground of inadequacy of the price—it having become the right of the purchaser. No. 829, W. C. 20th September, C. C. 19th October 1833,.....II. 127

2. Inadequacy of price alone is not a legal ground for annulling an auction sale.. No. 928, C. C. 16th January 1835, ... II. 199

INCEST.

1. Incest may be prosecuted as a public offence: the rule in Clause 6, Regulation XVII. 1817, which requires that in case of adultery the woman must be prosecuted by her husband, not being applicable to the other kinds of *zinna*, among which incest is included. No. 865, W. C. 14th February, C. C. 28th February 1834, ... II. 156

INDIGO.

1. If a ryot enter into engagements with an indigo planter to cultivate a particular spot of ground and refuse to fulfil his engagements, the planter is not at liberty to cultivate the land by means of his own servants, nor has he a right to demand the assistance of the police for the purpose of compelling the ryot to fulfil his contract. His only legal remedy is in the civil court, as prescribed by Section 5, Regulation VI. 1823. [*See Section 2, Regulation V. 1830, and Acts XVI. of 1835 and X. of 1836.*] No. 385, 29th April 1835, ... I. 159

2. An indigo planter, not being a *zumeendar*, has no power to summon ryots and compel their attendance. No. 394, 17th June 1825, ... I. 165

3. Engagements executed by parties applying for possession of indigo crops under Clause 9, Section 3, Regulation V. 1823, are to be enforced under a summary award; the decree should contain a provision for the payment, by the party cast, of the sum specified in his engagement; and in the event of the amount not being paid, it should be realised by the process for giving effect to summary judgments. The case is not altered by the fact of the parties cast being British born subjects, such individuals being, by Sec. 107, Cap. 155, Geo. III. declared, equally with natives, amenable to the local courts of civil judicature. No. 515, 24th July 1829, ...I. 218

4. The defendants under Regulation V. 1830, should be summoned by an *ittilehnumeh*, to be served by a single peon. The order to cultivate can only be enforced by the menace of increased punishment on further default. [*See the references at No. 1.*] No. 564, 9th July 1830, ...I. 237

5. The limitation of one year prescribed for summary suits for rent by Section 4, Regulation II. 1805, is applicable to suits for the recovery of advances for indigo contracted under Regulation VI. 1823. No. 565, 9th July 1830,..... I. 237

6. The owner of the factory for the time being must be considered as standing in the place of the former owner by whom the advance was made, and equally entitled to adopt any of the processes for the recovery thereof which the regulations allow. No. 565, 9th July 1830,..... I. 237

7. A magistrate can interfere with indigo disputes, only when they are cognizable under Regulation XV. 1824, as construed by Circular Orders, Nizamut Adawlut, 27th December 1830: such disputes as do not come within Regulation XV. 1824, must be heard and decided in the civil court under Regulation VI. 1823. [*Since the rescission of Regulation XV. 1824, by Act IV 1840, all disputes of this nature are cognizable by the magistrate.*] No. 652, 5th August 1831, ... II. 16

8. In indigo disputes which are cognizable by a magistrate, he may depute an assistant under Regulation XI. 1824. No. 652, 5th August 1831,... II. 16

9. If it be proved that the engagement [by which the ryot engages to cultivate indigo for five or ten years, and by which he is required to settle his accounts annually and receive fresh advances] was voluntarily executed by the ryot, the criminal court must enforce the provisions of Section 3, Regulation V. 1830. [*This section is rescinded by Act XVI. 1835, and the magistrate's power to force a ryot to fulfil his engagements taken away.*] No. 873, 28th February 1834, ...II. 164

10. No objection can be taken to the engagement under Section 7, Regulation VI. 1823, on account of the stamp, provided the value of it is such as is required for a bond of a similar amount. No. 873, 28th February 1834,..... II. 164

11. Regulation V. 1830, contains no provision for compelling a ryot to settle his accounts at the end of the year. No. 873, 28th February 1834, ... II. 164

12. A ryot cannot claim a settlement of his accounts, under Section 5, Regulation V. 1830, till "the expiration of the period of his contract," and if he assert that the planter is indebted to him for indigo plant, and refuses to pay what he demands, he must seek redress by a regular civil suit. No. 934, C. C. 20th February, W. C. 13th March 1835, ... II. 202

13. Regular suits instituted in conformity with the provisions of Regulation VI. 1823, and Act X. 1836, in which the amount of the claim does not exceed 300 rupees, and in which neither party may be an European British subject, European foreigner, or American, are cognizable by moonsiffs in like manner as other cases legally within the competency of those officers to dispose of. [*Section 7, Act VI. 1843, removes*

the restriction against the cognizance by moonsiffs of suits to which Europeans are parties.] No 1092, W. C. 2d June, C. C. 23d June 1837,...II 310

14. A sillah judge has no summary jurisdiction under Clause 1, Section 5, Regulation V. 1830, in case of an application by a ryot to settle his accounts with an indigo factory before the expiration of his contract. No. 1130, C. and W. C. 9th February 1838,..... III. 4

15. Held that a magistrate cannot decide indigo disputes, unless the parties claim the proprietary right in the land. [*This construction is superseded by Act IV. 1840, under which the magistrate may decide all disputes of this nature.*] No. 1170, C. and W. C. 17th September 1838,..... III. 27

16. The highest amount of penalty for non-performance of contract for indigo, i. e. "three times the amount advanced," includes interest. No. 1310, W. C. 24th September, C. C. 22d October 1841,...III. 83

17. The decision of a principal sudder ameen or sudder ameen passed in a summary suit instituted under Regulation VI. 1823, and referred to him for decision under Section 5, Act X. 1836, is not appealable with reference to the rule in Section 5 of the former enactment. No. 1357, C. C. 5th August, W. C. 2d September 1842,.....III. 505

18. A, a ryot, asserting himself to be under engagements to B, an indigo planter, complains that C, another planter, who states that he has made advances to A, is about forcibly to cut the crop. Held that A, being in possession, may give the disputed crop to B or C, and that the magistrate may prohibit C from attempting to take forcible possession; C, of course will have his redress in the civil court against A, or B, under Regulation VI. 1823, and Act X. 1836, and if he timely take his measures there, supposing his claim be in reality a better one than that of B, he may upon giving security on a summary enquiry be enabled to cut and carry away the disputed plant No. 1359, C. C. 5th August, W. C. 2d September 1842, ... III. 97

INSANE.

1. A session judge may dispose of insane prisoners agreeably to the rules contained in paragraph 4 of the Circular Orders, Nizamut Adawlut, 11th February 1825. No 822, C. C. 30th August, W. C. 20th September 1833, ... II. 123

2. The courts cannot interfere with the estate of a lunatic consisting only of personal property. No. 1311, W. C. 15th October, C. C. 5th November 1841,..... III. 83

INSOLVENT DEBTORS.

1. The provisions of Section 11, Regulation II. 1806, for the relief of insolvent debtors, are applicable only to persons confined under a *decree* of court whether regular or summary, and not to those confined under judicial process against whom no final decision or award has been passed. Nos. 24, 20th September 1806,..... I. 7

No. 60, 22d May 1810, ... I. 14

Nos. 86, 11th April 1811,..... I. 20

No. 95, 12th December 1811, ... I. 23

No. 319, 21st July 1820, ... I. 131

No. 328, 1st September 1820, ... I. 134

No. 372, 31st December 1824,..... I. 154

2. They are consequently not applicable to the case of a person confined by the collector for arrears of public revenue. No. 24, 20th September 1806, I. 7

No. 86, 11th April 1811,..... I. 20

3. Nor to that of an *abcar* confined at the instance of the collector for arrears of *abcaree* revenue. No. 302, 28th May 1819,..... I. 121

4. No fixed period is specified to be allowed to the creditor to point out property of the debtor applying for his release; it is left to the discretion of the court enforcing the judgment. No. 86, 11th April 1811, I. 20

5. A pauper plaintiff whose suit has been dismissed, confined at the instance of the defendants, on account of costs, is, like other debtors, entitled to the benefits of this provision. No. 110, 3d September 1812,..... I. 29

6. A debtor is entitled to his release on making a fair discovery and surrender of all the property he possesses, without regard to the amount of his debt, or the length of time he has been imprisoned under the decree. The provisions of Clause 7, Section 5, Regulation XXIII. 1814, makes no alteration in the rule, further than to determine that no one shall be confined more than six months in satisfaction of a decree for a sum not exceeding 64 rupees. No. 308, 19th November 1819,..... I. 125

No. 328, 1st September 1820, ... I. 134

7. The provisions of Section 11, Regulation II. 1806, are not applicable to persons imprisoned under a summary sentence passed by a judge, in pursuance of Clause 1, Section 17, Regulation XXVIII. 1803, for having aided and abetted in withdrawing cattle, attached for arrears of revenue due to Government; the sentence providing that the party shall be confined until the property withdrawn from attachment be restored or the arrear paid. But it was held that the other parts of the decree being satisfied, the defendants could not be detained for costs alone. No. 309, 17th December 1819, ... I. 126

8. The collector is competent to release a person confined in execution of a summary decree for rent on proof of insolvency. No. 784, C. C. 19th April, W. C. 17th May 1833,..... II. 97

9. A sillah judge entrusted with the execution of a decree of the Sudder Dewanny Adawlut, is competent to release the debtor confined in execution thereof, on proof of insolvency, without referring the case to the Court. No. 1062, C. C. 16th December, W. C. 30th December, 1836, ... II. 290

10. Wilful concealment of bond-debts due to an insolvent, examined on oath, is punishable on conviction as wilful perjury. No. 1066, C. C. 14th April, W. C. 28th April 1837, ... II. 306

11. The native judges are competent to enquire into the solvency of debtors confined under their decrees. The application for release should be preferred to the zillah judge, who will dispose of the case, or refer it for investigation to the native judge. If the decision of the latter be for the release of the prisoner, application should be made to the judge for an order to the jailor to that effect, leaving parties dissatisfied with the order of the lower court, the option of appeal. No. 1108, C. C. 8th September, W. C. 22d September 1837, ... II. 324

12. The judge is not competent to release a debtor without the consent of the creditor, solely on the plea of illness, or on any other ground than that of insolvency. No. 1114, W. C. 24th November, C. C. 8th December 1837, ... II. 328

13. The provisions of Section 11, Regulation II. 1806, are intended solely for the relief of insolvent debtors who may be in confinement; but the court may accept from a debtor, not in confinement, an engagement to liquidate his debt by instalments, and cause execution of the decree in conformity thereto. No. 1196, C. C. 16th November, W. C. 26th August 1836, ... III. 41

INSTITUTION FEE.

See "Stamps, III." *passim.*

INSTRUMENTS OF HUSBANDRY.

1. The prohibition in Section 14, Regulation V. 1812, against the sale by moonsiffs of instruments of husbandry, does not extend to sales in execution of decrees of court. No. 962, W. C. 26th June, C. C. 31st July 1835, ... II. 219

INTEREST.

1. The restriction against a judgment for interest exceeding principal, is not applicable where the accumulation is subsequent to the institution of the suit; and therefore not ascribable to procrastination on the part of the creditor. No. 359, 19th December 1823, ... I. 149

2. The provisions of Regulations XV. 1793, and XXXIV. 1803, respecting the legal rate of interest, are applicable only to loans of money and not to loans of grain. No. 497, 12th September 1828, ... I. 207

3. Interest may be awarded on the amount decreed on 9th February 1820, not realised till March 1832, provided the delay in realising it was not owing to the default of the decree-holder. No. 690, 4th May 1832, ... II. 42

4. When costs of suit are included in a decree, they become part of the matter awarded, and as such are liable with other property so adjudged to interest from the date of the court's decision. No. 716, W. C. 7th September, C. C. 5th October 1832,... II. 56

5. Appellate courts are not competent to award less than the legal rate of interest, i. e. 12 per cent. per annum on the sum decreed by the lower court. No. 976, W. C. 7th August, C. C. 16th September 1835, ... II. 227

6. The court executing a decree may impose accruing interest of the debt on any claimant whose objections may in its judgment be evidently collusive and litigious, or vexatious and unfounded. No. 1010, C. C. 3d June, W. C. 24th June 1836,..... II. 257

7. Interest on costs should be granted in all cases, whether the claim be for money, land, or other description of property. No. 1095, C. C. 30th June, W. C. 21st July 1837, ... II. 312

8. If a party sue for the principal of a debt in a court which he knows is not competent to adjudge a larger amount, without, at the same time, claiming interest, he must be presumed to have relinquished his claim to interest, and cannot, after having obtained a decree for the principal, institute a second suit to recover the interest, as this would amount to splitting the cause of action so as to render a suit cognisable by a particular court of inferior jurisdiction, which is opposed to the practice of the courts. No. 1182, C. and W. C. 2d November 1838,..... III. 32

INTESTATES.

1. The judge of Backergunge having asked what measures were to be adopted respecting the disposal of sundry bonds, *tumeskooks*, &c., deposited in his court, belonging to persons dying intestate, was referred to Section 7, Regulation V. 1799, which requires that an inventory of all personal property, unclaimed after a period of 12 months from the decease of the proprietor, shall be transmitted to the Governor General in Council for his orders. No. 541, 19th March 1830, ... I. 229

2. The provisions of Section 7, Regulation V. 1799, and Clause 7, Section 16, Regulation III. 1803, apply only to the property of persons dying intestate, when no heirs are forthcoming; unclaimed property sent in by the police should be disposed of by the magistrate. No. 927, W. C. 16th January, C. C. 6th February 1835, ... II. 199

3. Hoondees and other obligations for the payment of money, appertaining to the estates of persons dying intestate, may be realised by the civil court on falling due, and the amount kept in deposit until the expiration of 12 months, specified in Section 7, Regulation V. 1799. The interference however of the civil court should be limited to the simple presentation of the instruments payable at a fixed period, the failure to present which would involve a risk of loss, and

to the realization of monies indisputably due thereon, and not extend any further, or include the assertion and prosecution of denied or disputed claims. No. 1286, C. C. 14th August, W. C. 4th September 1840,..... III. 77

IRREGULARITY OR ILLEGALITY OF DECISIONS.

1. A judge is not competent to set aside the decision passed by a moonsiff appointed under Regulation V. 1831, on the ground of irregularity or error: such decisions are on the same footing as the decrees of other courts, and no appeal is admissible from them, notwithstanding irregularity or error, after the lapse of the prescribed period, unless good and sufficient cause be shewn for the delay which may have occurred in excess of that period. No. 979, C. C. 11th September, W. C. 2d October 1835,..... II. 226

2. A judge, though he cannot set aside a decision of one of the inferior tribunals on the ground of irregularity or illegality, may direct the parties interested to appeal though the prescribed period for appealing have elapsed. No. 1049, C. C. 30th September, W. C. 21st October 1836,..... II. 281

ISMINUVEESEES.

See "Stamps, V." *passim.*

ISSUING FORGED DEEDS.

See "Forgery," No. 4.

JAILS, CIVIL.

See "Civil Jails and Prisoners," *passim.*

JAILS, CRIMINAL.

1. The commissioner of circuit is not authorised to issue orders direct to jail officers regarding the management of jails. The control of the Nizamut Adawlut over jails is not affected by Section 8, Regulation IX. 1831. No. 746, C. C. 28th December 1832, W. C. 9th February 1833, ... II. 72

2. Held that under the urgent circumstances of the case, the commissioner of circuit [also superintendant of police,] was justified in directly interfering with the management of a criminal jail. No. 909, W. C. 17th October, C. C. 14th November, 1834,..... II. 186

3. The power of hearing appeals from the jailor and other subordinate officers of the jail, is by Section 7, Act XXIV. 1837, vested in the session judge. No. 1142, C. and W. C. 28d March 1838,... III. 10

4. Prisoners disabling themselves for labor are guilty of a breach of prison discipline, and as such punishable by the magistrate under the general rules laid down for the better management of the public jails. No. 1152, C. and W. C. 11th May 1838, III. 16

5. The session judges have the same control and superintendance over the jails as was possessed by the commissioners under Section 3, Regulation I. 1829. This however in no way relates to the strength and expense of the jail establishment; the correspondence in such matters must still be conducted through the office of the superintendant of police, under the provisions of Section 13, Regulation XVII. 1816, and Section 2, Act XXIV. 1837. No. 1197, C. C. 4th January, W. C. 15th January 1839, ... III. 42

6. A session judge is vested with the control and superintendance of the jail of the district at which his court may be held, as well as of any district that may be subject to his jurisdiction. No. 1198, W. C. 11th January, C. C. 25th January 1839, III. 42

JOINT MAGISTRATE.

1. When the police establishment of the thannas within the limits of a joint magistrate's jurisdiction have not been placed under his immediate authority by an order of Government, in conformity with Section 11, Regulation XVI. 1810, the whole of the naave officers composing those establishments continue under the control of the magistrate of the district. No. 210, 8th June 1815,..... I. 67

2. Application for leave by the officers of thannahs under the above predicament should be forwarded, through the joint magistrate, to the magistrate. No. 232, 24th January 1816, ... I. 76

3. If a joint magistrate be acting in subordination to his principal without independent authority, his orders are appealable in the first instance to the magistrate, the commissioner being competent to call for the proceedings of any of his subordinates: if the joint magistrate be acting independently of the magistrate, that is, has charge of a portion of the district or a particular department, his orders are appealable to the commissioner direct. [*Rescinded by Construction* 1326.] No. 858, W. C. 31st January, C. C. 14th February 1834, ... II. 153

4. An order of commitment made by a joint magistrate residing at the sudder station without independent jurisdiction, cannot be reversed by the magistrate of the district: this can only be done by the session judge or commissioner. No. 906, W. C. 10th October, C. C. 24th October 1834,..... II. 185

5. A joint magistrate is competent, under para. 6 of the resolution of Government of 1st November 1831, unless expressly interdicted by the magistrate, to commit prisoners for trial to the sessions court, and it is not necessary for the magistrate to revise his commitments. No. 911, 17th October 1834,... II. 187

6. As under the orders of Government of 1st November 1831, joint magistrates are competent and required to exercise the full powers of magistrate, unless interdicted from the exercise of such power by

their superior; they are empowered to try appeals from the orders of sudder ameens in petty criminal cases. No. 1231, C. C. 12th July, W. C. 9th August 1839, ... III. 58

7. A magistrate is competent to refer to a joint magistrate, not holding independent jurisdiction, criminal cases for report, though, with reference to the respective powers of those officers, the measure should be resorted to as seldom as possible. No. 1234, C. C. 19th July, W. C. 9th August 1839, ... III. 59

8. Under Act XXXI. 1841, all appeals from a joint magistrate, of whatever powers, are appealable exclusively to the session judge. Construction 858 is therefore no longer in force. No. 1326, W. C. 12th February, C. C. 26th March 1842, ... III. 87

JOTEDAR.

1. Though the land included in an *ijareh*, or the *jote* of a cultivating ryot, cannot be transferred by sale, the interest of the party claiming the *ijareh* or *jote* is capable of being valued: the plaintiff may lay his suit at the amount he considers the value of his interest in the thing claimed; to which if the defendant make objection, the judge will decide thereon, after making the summary enquiry directed by Section 4, Regulation XIII. 1808. No. 702, C. C. 6th July, W. C. 27th July 1832, ... II. 47

2. In a suit by a resident cultivator, instituted in the zillah court or before a moonsiff to set aside the summary award of a collector adjudging a balance against him and ejecting him from his *jote* as a defaulter, the value must be estimated at the amount of rent in dispute, or, in other terms, at the amount of balance sued for in the first instance. No. 862, W. C. 7th February, C. C. 28th February 1834, II. 156

3 The rights and interests of a *jotedar* may be sold in execution of a decree. No. 890, C. C. 11th July, W. C. 5th September 1834, ... II. 177

4. The landlord must establish by a suit, regular or summary, the existence of an arrear, before he is at liberty to cancel the lease of an under tenant; and *khag-khasht ryots* have also the power of immediately paying into court, any sum adjudged to be due from them, before they can be ejected. No. 1205, W. C. 15th March, C. C. 12th April 1839, ... III. 46

JUREEMANA.

1. In reply to a question whether proprietors of estates are entitled to *jureemana* or penalty equal to interest on arrears of land rent, the Court informed the judge that they were not aware of any regulation which authorizes proprietors to demand more than the rent claimable by them, with legal interest thereon; but directed him to decide the suit out of which the question arose, [which appeared to be appealable to the Sudder Dewanny Adawlut,] leaving the party dissatisfied to appeal. No. 660, 21st October 1831, ... II. 28

JURISDICTION OF CIVIL COURTS.

See "Original Suits, III." *passim.*

JURISDICTION OF CRIMINAL COURTS.

1. A magistrate, in whose jurisdiction a person may be apprehended, is competent to take cognizance of the charge, and commit to the court of circuit, though the crime was committed in another district. [*For rule of proceeding in such case, see Regulation VIII.* 1822.] No. 271, 26th March 1817, I. 96

2. A magistrate cannot apprehend any person charged with offences committed beyond the limits of his own district, and not actually residing within the district of such apprehending magistrate when the complaint was preferred. No. 404, 26th August 1825, ... I. 169

3. The magistrate of Rungpore having requested permission to transfer a criminal trial from Rungpore to Goalpara; the Court could not sanction the transfer, Goalpara being a place to which the regulations of Government do not extend, and not being one of those stations contemplated in the provisions of Regulation VIII. 1822. No. 474, 22d February 1828, ... I. 201

4. An appeal from an order of the magistrate of Sylhet, attaching lands at the requisition of the magistrate of Dacca Jelalpoor, should be made to the commissioner of the division, [session judge,] to which the former is subordinate, as the attachment was his immediate act. No. 625, 25th February 1831, II. 4

5. In a case of disputed possession, the plaintiff asserted the lands to be situate in Purneah, the defendant that they were in Bhagulpore. The magistrate of Purneah was informed that, if the case was cognisable under Regulation XV. 1824, he should make the necessary enquiry, and if it should appear that the lands were in Bhagulpore, he should refer the parties to the magistrate of that district, and certify to that officer the proceedings held by him in the No. 694, 18th May 1832, ... II. 44

6. An inhabitant of Lahore carried away a child without the knowledge of his parents, inhabitants of the same state, and settled in the British territories, in which he was accused by the parents and proved to have committed the crime. Held that though the prisoner could not be tried in our courts for child stealing, he might be committed on the minor charge "of retaining in his possession a child knowing him to have been stolen." No. 1043, W. C. 30th September, C. C. 2d September 1836, ... II. 279

7. Held that the session judge of Meerut was not competent, without first having obtained the authority of Government, to try certain prisoners, charged with murder by thuggee and plunder of pro-

perty, such acts having been committed in the Umballa territory; and that similarly it was not competent to that officer, in the absence of the authority of Government, or of that of the Nizamut Adawlut, under the provisions of Regulation VIII. 1822, to enter on the trial of certain other persons on the charge of buying children from the thugs knowing them to have been unlawfully obtained, or aiding and abetting in the sale, both of which offences were perpetrated in the district of Kurnaul, within the jurisdiction of the session judge of Delhi. No. 1213, W. C. 3d May, C. C. 17th May 1839, ... III. 51

See "Military Cantonments, Courts, &c. Criminal."

JURORS.

See "Assessors," *passim*.

JUSTICE OF THE PEACE.

1. The appeal from a conviction of a British subject by a magistrate in his capacity of justice of the peace under 53 Geo. III. Cap. 155, lies not to the circuit court, but to the Supreme Court in Calcutta. [*Under Act IV. 1843, the appeal will lie to the session judge*] No. 340, 25th May 1821,..... I. 139

2. A magistrate requiring advice on any point connected with his duties and powers as justice of the peace, should consult the advocate general, through the Secretary to Government in the judicial department [*Such applications to be forwarded to the advocate general through the Sudder Court—See orders of Government, dated 6th February* 1843, *Circular Order, Sudder Dewanny and Nizamut Adawlut, dated 21st April* 1843.] No. 446, 9th March 1827, ... I. 188

KABEENNAMEH.

See "Stamps, II." No. 2

1. The attestation by a *perguunah kazee* of a deed for land situate in a perguunah of which he is not appointed *kazee*, and executed out of his jurisdiction, must be considered as entirely unofficial, and of no greater weight than the attestation of other persons not given officially. No. 14, 29th November 1805, I. 4

2. Kazees are competent to authenticate powers of attorney; but the court may call for further evidence, should there appear reason to doubt the execution of an instrument by the person whose act and deed it purported to be. No. 486, 3d November 1826,..... I. 183

3. A kazee cannot appoint a deputy without the express permission of the ruling power. No. 707, 27th July 1832, ... II. 51

4. A perguunah *kazee* may sue to recover what he considers himself entitled to for fees of office; but it rests with the court to determine the extent to which such claim should be admitted, keeping in mind that the payment of fees is entirely voluntary. No. 1042, C. C. 19th August, W. C. 9th September 1836,..... II. 278

5. The zillah judge cannot summarily interfere to put a *kazee* in possession of his *perguunahs*, unless a decree expressly sanctions such a proceeding. No. 1042, C. C. 19th August, W. C. 9th September 1836, ... II. 278

6. For the celebration of marriages and performance of religious duties or ceremonies, the acts of any *kazee*, though not specially empowered for the immediate locality, would be valid and lawful; but the drawing up and attestation of papers and making a record of them must be performed [to be legal] by the kazee of the jurisdiction in which the property specified may be situated. No. 1042, C. C. 19th August, W. C. 9th September 1836,..... II. 278

KISTBUNDEE.

1. A kistbundee executed by a debtor confined in execution of a decree, acknowledged by the parties before the judge and attested by his signature, is to be enforced like a decree. No. 44, 7th December 1808,..... I. 11

KUBOOLYUTS.

1. Regulation V. 1812, contains no provisions for a summary suit to compel *ryots* to take *pottahs* and give *kabooluyuts*, but the landholders may proceed according to Section 5, Regulation IV. 1794, and Sections 9 and 10, Regulation V. 1812. No. 257, 4th September 1816,..... I. 89

2. No stamp is required for *pottahs* and *kabooluyuts*, granted to or taken from the actual cultivators of the soil, whether Government be a party or not to the transaction. No. 635, 20th May 1831,... II. 9

LABOR.

1. It is not competent to a magistrate to permit convicts to work on the roads who have not been sentenced to labor, though they should themselves desire to be so employed. No. 1005, W. C. 9th April, C. C. 8th July 1836, ... II. 250

See "Exemption from labor," *passim*.

LAKHERAJE.

See "Rent Free Lands," *passim*.

LAW OFFICERS.

1. Section 8, Regulation V. 1797, has express reference to the case of a law officer of a circuit court prevented by illness or otherwise from attending. (See

Regulation IV. 1830.]. No. 153, 14th April 1814, ... I. 48

2. A magistrate has no control over the law officer of the circuit court, and is not authorized to direct the Government pleader to communicate with such officer on a matter relating to a *futwa* delivered by him in a criminal trial before the circuit court. No. 631, 25th March 1831, ... II. 17

See "Reference of Criminal Cases to Law Officers and Sudder Ameens," *passim*.

LEASES.

1. An *ijarehdar* obtains a farm for 5 years, and enters into engagements with the *ryots*; but becoming a defaulter at the end of two years, is ousted by the *zumeendar* under Clause 7, Section 15, Regulation VII. 1799. The judge having asked if a new *ijarehdar*, obtaining a lease for the remaining three years, can cancel the leases granted by the first *ijarehdar*, was referred to Clause 4, Section 18, Regulation VIII. 1819, which empowers the *zumeendar* to cancel all leases, &c. intermediate between himself and the actual cultivators. No 502, 24th April 1829, ... I. 214

2. A lease granted to, a farmer by the Court of Wards upheld, in the absence of collusion, against a person who, by a regular suit, disproved the adoption of the minor for whom the Court of Wards acted, and obtained a decree for the estate in his own favor. No. 540, 26th February 1830, ... I. 229

3. Regulation VI. 1822, has retrospective as well as prospective effect, and leases granted by the Court of Wards, though antecedent to the promulgation of that enactment, have the same effect, and are subject to the same rules and regulations as are applicable to other persons holding farms under the collector of land revenue. No. 943, C. C. 6th March, W. C. 6th February, Government 7th April 1835, ... II. 206

4. Courts executing decrees are competent, on a summary investigation, to cancel any lease granted by the party against whom the decree has been given, which may be satisfactorily proved to be fraudulent, leaving the parties dissatisfied to appeal summarily, or institute a regular suit to recover possession of their alleged rights. No. 1059, 2d December 1836,... II. 288

LEPER.

1. The fact of a witness being afflicted with leprosy, does not bar the admission of his evidence in the courts of justice. No. 726, 26th October 1832, ... II. 60

2. A Hindoo is liable to punishment for aiding and abetting in the suicide of a leper. No. 985, W. C. 30th October, C. C. 18th December 1835, II. 233

LIMITATION OF ACTION IN ORIGINAL SUITS.

See "Original Suits, VI." *passim*.

LIMITATION OF APPEAL IN CIVIL SUITS.

See "Appeals, IV. Limitation of time in," *passim*.

LIMITATION OF APPEAL IN CRIMINAL CASES.

See "Magistrate's orders, appeals from, and revision of," Nos. 16, 19, 23, 32.

See "Workmen and Servants," Nos. 5, 8

LIMITATION OF COLLECTOR'S SUMMARY PROCESS

See "Collectors," Nos. 6, 7, 8, 39.

LIMITATION OF DISTRAINT.

See "Distraint," Nos. 1, 5.

LIMITATION OF TIME.

1. Application to enforce an award of arbitration dated 28th December 1840, the period of six months within which it was necessary to make the application expiring on the 28th June Held that as that and the following day were holidays, it was allowable to the party to present his application on the next first court day A party under a legal obligation to move a court within a given period, may be allowed to postpone such motion to a day beyond the period, supposing the last day to be a Sunday or holiday. No. 1842, C. C. 18th March, W. C. 29th March 1842, III. 91

LITIGIOUS CRIMINAL APPEALS.

See "Malicious Charges," Nos. 4, 9.

LITIGIOUS SUITS AND APPEALS.

1. The subsistence money of paupers confined for litigious suits or appeals should be paid by Government. No. 9, 13th September 1805, ... I. 3

2. Women of rank exempted from personal attendance cannot be confined for litigious suits or appeals. No. 11, 26th September 1805, ... I. 4

3. A litigious pauper may be confined notwithstanding an appeal be preferred from the decision. No. 12, 19th October 1805, ... I. 4

4. Litigious paupers are to undergo their confinement in the civil, and not in the criminal jail. No. 57, 9th January 1810, ... I. 13

5. Section 40, Regulation XXIII. 1814, does not authorise a moonsiff or sudder ameen to impose a fine for a litigious or vexatious suit: he should award damages to the defendant. The fine would be leviable only on account of Government. If damages are awarded, they belong to the party declared by the

decree entitled to them. No. 966, C. C. 17th July, W. C. 28th August 1835,... ..... II. 220

6. In the event of damages being awarded, no report need be made to the judge as required by Section 42, Regulation XXII. in the case of fines imposed: [*see Sections 3 and 4, Act VI* 1843.] The damages in such case form part of the decree, and unless the party dissatisfied with it, appeal, the decree will be executed without reference to the judge, in the same manner as other decrees of court No. 966, C. C. 17th July, W. C. 28th August 1835,... II. 220

7. The courts may impose the payment of accruing interest of any debt on any claimant, whose objections are evidently collusive and litigious, or vexatious and unfounded, subject of course to an appeal. No 1010, C. C. 3d June, W. C. 24th June 1836, ... II. 257

8. Fines imposed for litigious appeals, if not immediately forthcoming, are to be realized under the rules applicable to the execution of decrees. No. 1096, C. and W. C. 7th July, ... II. 313

LOCAL ENQUIRIES.

1. The native judges are entitled to no allowance for travelling charges or on other account in cases in which, for their own satisfaction or at the request of the parties, they may deem it proper to visit and inspect the property in dispute, or to make enquiries in regard to it on the spot: they are however entitled to the payment of their expenses when deputed to make local enquiries by a superior court. No. 1172, 14th September 1836,..... III. 27

See "Amoens," *passim.*

MAGISTRATE'S ORDERS, APPEALS FROM, AND REVISION OF.

1. The court of circuit may annul commitments made by, and dismiss charges pending before a magistrate, when such commitment and charges shall appear to be clearly and manifestly unfounded. No. 114, 26th November 1812, ... I. 38

2. The courts of circuit are competent, if they think a magistrate's order, though within his competency, improper or unjust, to annul the same, and direct the release or commitment of the defendant. No. 120, 8th March 1813, ... I. 84

3. Two or more judges of the circuit court may direct a magistrate to certify a case of disputed possession to the civil court, under Section 5, Regulation VI. 1813. [*The magistrature, since the enactment of Regulation XV.* 1824, *do not certify cases to the civil court. See Act IV.* 1840.] No. 167, 6th July 1814, ... I. 51

4. When a single judge of circuit at the sudder station has rejected a petition of appeal from the sentence of a magistrate, it is not competent to the other judges to call for and revise the proceedings on the same grounds, though they may call for them on other grounds No. 205, 25th May 1815, ... I 65

5. A single judge of circuit cannot alter or reverse the order of a magistrate, without the concurrence of one of his colleagues. No. 235, 9th February 1816,..... I. 78

6. A conviction by a magistrate in a trial, on the result of which he is expressly authorised by Section 19, Regulation IX. 1807, to pass sentence to the extent specified in that Section, is not liable to be impeached as a "conviction without trial," on the ground of its not being a "regular trial before a judge aided by his law officer." No. 259, 31st October 1816,..... I 90

7. Nor can a court of circuit quash a sentence of conviction and punishment passed by a magistrate under the discretion vested in him by Section 19, Regulation IX. 1807, merely on the ground of his having tried a case of theft which, in the opinion of the court of circuit, should have been brought before that court—although it would be the duty of the judge of circuit, in pursuance of Section 63 of that Regulation, to report the magistrate's conduct to the Nizamut Adawlut, if it should appear he has been guilty of any serious or wilful misconduct, in the exercise of the powers entrusted to him, or, in the case of mere error of judgment, to point out the same to him for his future guidance. [*Sentences passed by magistrates under Regulation XII.* 1818, *have been repeatedly quashed under Section 6 of that Regulation, and the Circular Order, Nizamut Adawlut,* 16th *April* 1819.] No. 259, 31st October 1816,... I 90

8. Two judges of a court of circuit may annul the order of a magistrate imposing a fine for contempt of court. This power should be exercised with the utmost discretion. No. 288, 29th December 1817. I 105

9. Held that two judges of circuit cannot annul a commitment after the proceedings have been laid before the judge on circuit, who has postponed the trial in consequence of the non-appearance of the accused' No. 290, 2d April 1818, ... I 111

10. The Nizamut Adawlut, considering a commitment to have been made without due enquiry, annulled it, and directed the magistrate to make further enquiry, and recommit if he saw sufficient grounds. No. 290, 2d April 1818, ... I. 111

11. The appeal from the conviction of a British subject by a magistrate in his capacity of justice of the peace, under 53 Geo. III. cap 155, lies to the Supreme Court, and not to the court of circuit. [*The appeal will now lie under Act IV.* 1843, *to the session judge.*] No. 340, 25th May 1821, ... I. 139

12. The provincial court have power to rescind the order of a magistrate for the suspension of one of his officers, pending an enquiry into his conduct; though they should use this power with discretion They may also receive and act upon petitions from suspended officers forwarded by the dawk, provided they

be written on stampt paper. No. 344, 13th July 1821, ... I. 141

13. A judge on circuit is not precluded from calling for and revising the proceedings of a magistrate, by the fact of a former judge on circuit having seen the calendar without calling for them; but the final orders should be passed by the court collectively. No. 367, 31st October 1823,..... I. 148

14. A single judge of circuit cannot suspend the execution of a magistrate's sentence until the court collectively record their judgment. No. 383, 29th April 1825, ... I. 159

15. A single judge of circuit cannot fine the magistrate's treasurer; he should refer the case to the magistrate, and, if dissatisfied with the mode in which he disposes of it, bring the case under the cognizance of his colleagues for correction. No. 387, 27th May 1825, ... I. 160

16. Though no individual has a *right of appeal* to the court of circuit after the expiration of one month from the date of the magistrate's order, *calculated agreeably to the rule contained in Clause* 10, *Section* 8, *Regulation XXVI.* 1814; *(See Construction* 1382, *No.* 52,) and though the court, of circuit is not competent to receive a petition of appeal after the expiration of that period, without due cause being assigned: yet the courts of circuit are not only authorised, but enjoined, under the general powers vested in them by Clause 1, Section 12, Regulation XXV. 1814, to call for the magistrate's proceedings in any case in which they may see reason to presume a failure of justice, without reference to the source from whence their information is derived. No. 437, 10th November 1826, ... I. 183

17. Two judges of circuit are at all times competent to direct a magistrate to suspend execution of his order, and direct the release of a prisoner on bail, when justice may appear to require the measure; whether they may or may not have examined the proceedings on which the order is founded. No. 469, 12th December 1826, ... I. 207

18. A petitioner is not entitled to have his petition of appeal, forwarded by dawk, attended to, though the court may call for the magistrate's proceedings, from whatever source the information arrives. No. 513, 17th July 1829,..... I. 218

19. Section 3, Regulation II. 1829, does not rescind the rule contained in Section 5, Regulation III. 1821, and an appeal may be admitted from the order of a magistrate, though more than 30 days have elapsed from the date thereof, if it can be proved that the petitioner was prevented by circumstances beyond his control from presenting his petition within the prescribed period. [*But see Construction* 1832, *No.* 52.] The appellate court will judge whether the delay is sufficiently accounted for. No. 521, 4th September 1829, ... I. 222

No 697, 1st June 1822,..... II. 45

No. 730, 2d November 1832,..... II. 62

20. The Construction of Clause 5, Section 17, Regulation XVII. 1816, in the Circular Order, Nizamut Adawlut, 8th April 1816, [*See* Construction 940,] cannot be considered as barring an appeal of a native officer from a conviction of a specific offence. No. 573, 17th September 1830, ... I. 204

21. The appeal from the order of the magistrate of Sylhet, attaching lands in his district on a requisition of the magistrate of Dacca Jelalpour, lies to the commissioner to whom the former is subordinate. No. 625, 25th February 1831, ... II. 4

22. The commissioner calling for explanation in a criminal case decided by a magistrate, is competent to direct the prisoner sentenced to be admitted to bail, until a final order shall have been passed by the commissioner. No. 637, 2d September 1831,... II. 26

23. Though a party may have lost *his right of appeal* by being unable to shew sufficient cause for the delay, the commissioner is competent, under the general powers vested in him, to reverse the magistrate's order, if illegal. [*See infra, No.* 52.] No. 730, 2d November 1832,..... II. 62

24. A commissioner may direct a magistrate to admit a party to appeal and answer by attorney, if he see sufficient reason, without calling for the proceedings. No. 730, 2d November 1832, ... II. 62

25. A commissioner should not correspond by letter with a party appealing from the order of the magistrate, nor furnish him with copies of the magistrate's explanations; he should require the appellant to make his application on stampt paper, and, after calling on the magistrate for any explanation of his proceedings which may appear necessary, proceed to determine the question at issue; leaving the appellant to apply in the usual manner for copies of any papers he may wish to have. No. 818, 23d August 1833, ... II. 120

26. An appeal from the order of a magistrate fining an European British subject does not lie to the commissioner, though the magistrate be not a justice of the peace. [*Under Act IV.* 1840, *the appeal now lies to the session judge.*] No. 900, 12th September 1834,..... II. 165

27. The provisions of Clauses 4, 5, 6 and 7, Regulation XVII. 1816, having been superseded as regards police officers of whatever denomination, without reference to the amount of their salaries, appeals from orders for their dismissal may be received by the commissioners [*or, since the enactment of Act XXIV.* 1837, *by the superintendent of police, if one has been appointed.*] from any police officer, whether his salary be above or below 10 rupees a month. No. 907, W. C. 10th October, C. C. 7th November 1834,..... II. 166

28. The Circular Order, Nizamut Adawlut, of 8th April 1816, declaring the magistrate's orders, for the appointment and removal of native officers receiving a salary not exceeding 10 rupees, final, remains in full force in regard to all such officers, not

being police officers, who, under Section 6, Regulation XI. 1831, may appeal to the commissioner [*or, under the engagement of Act XXIV. 1837, the superintendent of police. Circular Order, Nizamut Adawlut, of 16th September 1842, declares this construction superseded, as far as regards officers attached to jails, by Act XXXI. 1841, Section 2 of which renders all orders passed by magistrates in other than criminal trials appealable to the session judge*]. No. 940, C. C. 27th March, W. C 23d January 1835, ... II 205

29. A person evading execution of a magistrate's sentence is not thereby debarred his right of appeal: and the appellate court is competent to suspend execution of the magistrate's sentence pending the appeal No. 941, W. C. 3d April, C. C. 24th April 1835, II. 205

30. A session judge is competent to direct the re-apprehension of a person charged with a criminal offence who may have been acquitted by the magistrate, and sentence him to imprisonment after hearing his defence. [*Superseded by Section 4, Regulation XXXI. 1841*]. No. 986, W. C. 6th November, C. C. 4th December 1835, ... II. 284

31. It is the duty of a session judge to call for any case, the order passed in which may, on a revision of the monthly statements, appear to him to be of questionable propriety. [*But see Act XXXI of 1841*]. No. 986, W. C. 6th November, C. C. 4th December 1835, ... II. 234

32. The appeal from the order of a magistrate requiring a person to enter into a moochulka or recognisance to keep the peace under Section 4, Regulation IV. 1825, will lie to the sessions judge, provided the order was passed in a regular criminal trial; and such appeals should be received at all times, whether the judge be sitting in the sessions court or not. If the magistrate's order was passed on the report of a police officer, or other miscellaneous proceeding, the appeal would lie to the commissioner. [*By Section 5, Act XXIV. 1837, the appeal in the latter case also is cognizable by the session judge, and by Section 6 his order thereon is made final, so that no subsequent appeal lies to the Nizamut Adawlut, as there would have been in the former case prior to the enactment of Act XXXI. 1841, which makes the session judge's order, passed in appeal from the magistrate's order, final.*] No 1031, C. C. 6th August, W. C. 26th August 1836, ... II. 271

33. The civil judge having made over a case to the magistrate, who convicts and punishes, the appeal from the magistrate's order would lie to the judge in his capacity of session judge; his having made over the case not preventing him from taking up the appeal. No. 1033, C. and W. C. 12th August 1836, ... II. 272

34. A session judge or commissioner, in his appellate capacity, may call for an English report from the magistrate. No. 1071, W. C. 3d February, C. C. 3d March 1837, ... II. 296

35. There is no law which positively requires that an appeal from the order of a magistrate shall be accompanied by a copy of the proceeding or decision appealed from. No. 1091, W. C. 17th March, C. C. 21st April 1837, ... II. 303

36. A case of bribery and corruption against a police officer is cognisable by the session judge, who may receive appeals in similar cases, and direct the magistrate to commit a case of bribery which he may have thrown out. [*But see Section 4, Act XXXI. 1841.*] No. 1134, C. C. 2d March, W. C. 16th February 1838, ... III. 6

37. The power of hearing appeals from the jailor and other subordinate officers of the jails is vested in the session judge. No. 1142, C. and W. C. 23d March 1838, ... III. 10

38 The magistrate's acts in the management of ferries are subject to the control of the superintendent of police, and it is not competent to the session judge to receive appeals from the magistrate's orders in such matters. No. 1144, C. and W. C. 6th April 1838, III. 11

39. Sections 5 and 7 of Act XXIV. 1837, are considered in force in those districts in which the whole administration of criminal justice has been transferred under Act VII. 1835, from the commissioners to the session judges, whether a superintendent of police has been appointed or not. Consequently all appeals from the orders passed by a magistrate in any judicial proceeding whatever, including cases coming under Regulation XV. 1824, [*or Act IV. 1840,*] lie to the session judge, and not to the commissioners, and the former officer should receive and forward to the Nizamut Adawlut the statements hitherto submitted and forwarded by the latter. No. 1145, W. C. 6th April, C. C. 27th April 1838, ... III. 11

40. A session judge is competent at any time to suspend a magistrate's order in cases under Regulation XV. 1824, [*or Act IV. 1840,*] pending the decision of the case in appeal. No. 1157, W. C. 6th July, C. C. 3d August 1838, ... III. 17

41. When any case decided by a magistrate may appear to a session judge not to have been sufficiently investigated, or further enquiry may be practicable or requisite for the ends of justice, such enquiry must, according to Section 22, Regulation IX. 1807, be instituted by the magistrate, who will communicate the result thereof to the session judge. No. 1169, C. C. 31st August 1838, ... III. 27

42. It is competent to the session judge, on sufficient grounds, to order the magistrate to replace on his file a case struck off on default. No 1169, C. C. 31st August 1838, ... III. 27

43. A soldier sneeze is not entitled to appeal from the decision of a magistrate in a case originally decided by the former, the right of appeal possessed by the dissatisfied party being sufficient for the ends of justice. No. 1185, C C. 19th November, W. C. 19th October 1838, ... III. 34

44. An order passed by a magistrate to prevent persons going about at night after a fixed hour is appealable to the session judge. No. 1239, C. C. 19th July, W. C. 20th September 1838, ... III. 60

45. The appeal from the order of a magistrate, requiring a zemeendar to provide a building for a residence of such police officers as may be stationed on his estate, lies to the session judge. No. 1247, C. C. 6th September, W. C. 27th September 1838, ... III. 64

46. Appeals from the orders of a magistrate enforcing the penalties against landholders, farmers, or their local managers, for not keeping up dawk establishments under Clause 5, Section 10, Regulation XX. 1817, lie to the session judge, and not to the superintendent of police. No. 1807, C. C. 30th July, W. C. 20th August 1841, ... III. 82

47. All criminal appeals pending at the date of the promulgation of Act XXXI. 1841, must be disposed of with reference to the provisions of that Act. No. 1618, W. C. 28th January, C. C. 11th February 1842, ... III. 85

48. The words "sentence or order" in Act XXXI. 1841, do not refer to interlocutory orders in cases under trial, and the provisions of the Act do not preclude the interference of the higher with such intermediate orders of the lower courts. No. 1322, W. C. 16th March, C. C. 1st April 1842, ... III. 86

49. All appeals from a joint magistrate of whatever powers are appealable, under Act XXXI. 1841, exclusively to the session judge. Construction 859 (see "Joint magistrates," No. 3) is consequently no longer in force. No. 1326, W. C. 12th February, C. C. 26th March 1842, ... III 87

50. Supposing a party to appeal, the amount of whose punishment clearly gives him that right, the session judge cannot interfere with another sentence in the same case which falls within *the limitations prescribed by Sections* 8 *and* 9, *Regulation IX.* 1793. No. 1330, C. C. 26th March, W. C. 20th May 1842, ... III. 88

51. If a party having an undoubted right to appeal, fail or neglect to do so, a person whose punishment falls within the limitations specified, cannot be permitted to appeal. No 1330, C. C. 26th March, W. C 20th May 1842, ... III. 88

52. Appeals under Act XXXI. 1841, are not admissible unless preferred within one month from the date of sentence or order: in this respect the law leaves no discretion. No. 1332, C. C. 1st April, W. C. 28th April 1842, ... III. 90

53. It rests with the magistrate to determine what is a "petty offence," and the measure of punishment, provided he do not exceed the limitation prescribed by Sections 8 and 9, Regulation IX. 1793, and Sections 8 and 9, Regulation VI. 1803; consequently no appeal will lie to the session judge in cases when the magistrate has passed a sentence within that limitation, for an offence for which a severer punishment might be passed under the regulations. No. 1353, W. C. 25th July, C. C. 26th August 1842, ... III. 95

54. The order of a magistrate inflicting a fine not exceeding 200 rupees, under the express condition specified in Section 8, Regulation IX 1793, [that the offender be a *sudder malgoozar* paying an annual revenue to Government of more than 10,000 rupees; or *zimadar* paying a quit revenue to Government exceeding 500 rupees per annum; or a proprietor of *lukheraje* land the annual produce of which may be above 1,000 rupees,] is not appealable: but it is incumbent on the magistrate, *in passing an order for a fine of above 50* rupees under that enactment, to set forth that the person fined is in the condition mentioned, and in the absence of such declaration on the part of the magistrate, any order of his directing the payment of a fine above 50 rupees is *prima facie* appealable. No. 1361, C. C. 9th August, W. C. 9th September 1842, ... III. 97

55. An appeal from decisions and orders of a superintendent of police in the Governor General's camp appointed under Act XXVI. 1836, is cognizable by a session judge, in the same manner and under the same restrictions as appeals from the decisions and orders of a magistrate, or other officer empowered to try criminal cases, are admissible No. 1370, W. C. 17th March, C. C. 31st March 1843; ..... III. 101

MAGISTRATES, POWERS OF.

1. A magistrate deeming the sentence he was competent to pass under Section 19, Regulation IX. 1807, on two convicts who assaulted a traveller, insufficient, was told that he should commit them for trial to the court of circuit No 85, 3d April 1811, ... I. 20

2. A magistrate cannot receive complaints concerning marriage; they must be brought in the civil court No. 148, 31st March 1814, ... I. 46

3. A magistrate cannot punish, for having a forged bank note in his possession, a person who has been tried and acquitted by the court of circuit on the charge of uttering the said note knowing it to be forged. No 361, 26th March 1824, ... I 150

4. Nor can he punish, for having in his possession counterfeit coin, a person acquitted by the court of circuit of uttering the said coin with intent to defraud. No. 362, 26th March 1824, ... I. 150

5. A magistrate cannot fine a collector for refusing to obey his orders: for Section 36, Regulation XIV. 1793, Section 12, Regulation VI. 1793, and Section 39, Regulation XXVII. 1803, apply only to the civil judges. No. 364, 23d April 1824, ... I. 151

No. 414, 17th March 1826, ... I. 174

6. A magistrate cannot proceed under Regulation IV. 1820, against a witness who refuses to be sworn before a court martial. [*Superseded by Section* 6, *Act XI.* 1841.] No. 401, 18th August 1825, I. 168

7. A magistrate cannot sentence a person for withholding information of a murder, to fine and im-

prisonment, but only to a fine not exceeding 200 rupees, commutable, if not paid, to imprisonment for six months. No. 485, 4th July 1828, ... I. 206

8. A magistrate cannot make a person repay, or restore money, or other property, obtained by false pretences or extortion, the property or money not having come into the hands of the court; nor can he compel the offender to execute a *mooochulka*, binding himself in a penalty to repay or restore the same. No. 616, 30th December 1831, ... I. 255

9. A magistrate is authorized to release a person charged with murder, if he consider the homicide accidental, or justifiable under the Mahomedan law; and if he is doubtful as to the law, he should apply to the law officer for his assistance. No. 617, 30th December 1831, ... I. 255

10. Held that it is highly irregular and improper in a magistrate to issue a *perwanek* to the Government pleader, directing him to communicate with the law officer, in a matter relating to a *futwa* delivered by him in a suit before the court of circuit. No. 631, 25th March 1831, ... II. 7

11. A magistrate is competent to entertain and investigate a charge of corruption, preferred against an officer on the establishment of the commissioner of revenue and circuit. No. 649, 22d July 1831, ... II. 15

12. A magistrate having sentenced a prisoner to imprisonment with labor in irons for two years, on a conviction of having passed an unfinished and unsigned note of the Indian Bank and thereby fraudulently obtained possession of cloths valued 100 rupees, the sentence was held to be illegal and quashed, and the magistrate directed to commit the prisoner for trial before the session judge. No. 684, 16th March 1832, ... II. 38

13. A magistrate was considered to have acted properly in refusing to interpose his authority to compel the delivery of a betrothed woman to a petitioner. No. 725, 26th October 1832, ... II. 60

14. A magistrate has no authority to interfere to regulate the exchange of copper into silver. No. 751, 4th January 1833, ... II. 76

15. A magistrate cannot receive a charge of bribery against a moonsiff, until the civil judge, after the requisite preliminary enquiry, shall give his sanction to the prosecution. No. 781, C. C. 12th April, W. C. 17th May 1833, ... II. 95

16. Magistrates are competent to remove chowdrees of trades and professions. No. 816, W. C. 23d August, C. C. 27th September 1833, ... II. 119

17. A magistrate cannot decide a case of bribery against a salt darogah, on evidence taken by himself in his capacity of salt agent. No. 817, C. C. 23d August 1833, ... II. 119

18. A magistrate has no authority to interfere with a view to restore to a petitioner a child whom he alleges to be his absconded slave. No. 887, W. C. 27th June, C. C. 18th July 1834, ... II. 172

19. Magistrates and other officers who were not liable to prosecution in the Company's courts for damages, for acts done in their official capacity, prior to the enactment of Act XI. 1836, have not been rendered liable by that Act. No. 1051, Government letter, dated 10th October 1836, ... II. 283

20. A magistrate is not competent to interfere in disputes between parents respecting the guardianship of a child. No. 1060, W. and C. C. 9th December 1836, ... II. 289

21. A magistrate cannot compel a *zumeendar* or other landholder to repair the public road passing through his village or estate. No. 1072, W. C. 3d February, C. C. 3d March 1837, ... II. 297

22. A magistrate is not competent to fine or imprison *muhajons* or *shroffs*, who may be in the habits of demanding illegal *batta* on Company's rupees. No. 1156, C. and W. C. 29th June 1838, ...III. 17

23. A magistrate may authorize a daroghs to detain at the thanah beyond the period of 48 hours, a party accused of a criminal offence, when the measure may appear to him absolutely necessary for the ends of justice. This power should be exercised with great discretion and only on the strongest grounds. No. 1167, C. and W. C. 17th August 1838, III. 25

24. Though a magistrate has no authority to direct the search of a house for the discovery of contraband opium *as such*; yet he may search for the discovery of opium or any other deleterious drug, which, from information before him, he may have reason to believe has been used as an instrument of death, and of which he considers it necessary for the ends of justice, that a discovery should be effected. No. 1241, W. C. 16th August, C. C. 9th September 1839, ... III. 61

25. A magistrate is not authorised to call upon a zumeendar to provide a building for the residence of such of the police as may be stationed on his estate, under Section 8, Regulation XVII. 1816, No. 1247, C. C. 6th September, W. C. 27th September 1839, ... III. 64

26. Magistrates are competent to punish the offence of using short weights as a fraud under the general regulations, but they cannot prescribe a current standard of weight. No. 1274, W. C. 28th February, C. C. 27th March 1840, ... III. 71

27. A magistrate is competent, in a case of affray, to sentence a party convicted, in addition to imprisonment for one year and two months, in default of payment of a fine of 50 rupees, under Regulation VIII. 1828, to furnish security to keep the peace for one year, or in default to be imprisoned for that period under Regulation IV. 1825. No. 1290, C. C. 8th January, W. C. 8th February 1841, ... III. 78

28. A magistrate is competent to punish as a misdemeanor, under the general powers vested in him by Section 19, Regulation IX. 1807, persons plying boats contrary to orders in the vicinity of a Government ferry. No. 1305, C. C. 16th July, W. C. 20th August 1841, ... III. 82

29. It is imperative on a magistrate under the provisions of Act XI. 1835, [regarding printing presses,] to sentence any person convicted of a breach of that law to imprisonment in addition to a fine; the fine is not commutable to a further period of imprisonment, but must be levied according to Act II. 1839. No. 1825, C. C. 11th February, W. C. 11th March 1842, ... III. 86

MAHOMLDAN LAW.

1. Held in a certain case that the court were not bound by the Mahomedan law, which declared that a person could not sell property not in his possession. No 136, 11th December 1813, ... I. 41

2. A sudder ameen should decide a suit in which the parties are Mahomedans according to the Mahomedan law, taking a futwa from the law officer if necessary. No. 424, 30th June 1826, ... I. 178

MAINTENANCE OF WIVES AND CHILDREN.

1. On the complaint of a wife against her husband for refusing to support her, the magistrate cannot require the husband to furnish security to support her; he should require the husband to enter into an engagement in writing to provide for his wife, and should punish any, and every subsequent breach of such engagement, distinctly complained of and proved, as a misdemeanor, by imprisonment not exceeding one month. No. 992, 18th December 1835, ... II. 239

2. The provisions of Section 4, Regulation VII. 1819, for compelling a person to provide for his wife and children, are not applicable to European British subjects as defendants. No. 1141, C. and W. C. 23d March 1838, ... III. 10

3. The evidence on oath of the mother of an illegitimate child on her complaint against the alleged father for refusing to provide for it, is *prima facie* good as far as it goes, but should be sifted and weighed as any other testimony, and tested as far as practicable by any circumstantial evidence that may offer. No. 1163, C. C. 3d April, W. C. 13th July 1838, ... III. 20

MALICIOUS CHARGES

1. On the 24th October 1811, the Court, by Construction 94, recorded their opinion that a magistrate is empowered to punish malicious and unfounded charges with imprisonment not exceeding six months, and a fine not exceeding 200 rupees, commutable, if not paid, to a further period of imprisonment not exceeding six months, adding that they understood Section 5, Regulation VII. 1811, to provide for an extension of the period of imprisonment limited by Section 10, Regulation IX 1793, leaving the provisions of fine, as they stood, in full force. But on the 31st August 1827, they, by Construction 459, recorded their opinion that the above mentioned construction should not be adhered to—and that a person convicted of this offence may be imprisoned for a period not exceeding six months and fined in any sum not exceeding 50 rupees, or if he be a proprietor of land paying more than 10,000 rupees to Government, or of *ayma* land paying more than 500 rupees, or of rent-free land yielding more than 1000 rupees, in any sum not exceeding 200 rupees. No. 94, 24th October 1811, ... I. 28
No. 459, 31st August 1827, ... I. 194

2. A false deposition on oath or solemn declaration, containing a deliberate and specific charge which the deponent knows to be unfounded, and which appears also to be malicious, is within the provisions of perjury, notwithstanding the provisions for false and malicious charges contained in Section 5, Regulation VII. 1811. No. 233, 28th January 1816, ... I. 77

3. A commissioner of circuit is not at liberty, in a case of commitment made by a magistrate, to punish the prosecutor for a groundless and malicious complaint, though he is doubtless competent to commit him and his witnesses for perjury, in the event of his seeing reason to believe that a false accusation has been preferred on oath, and an attempt made to substantiate it by false evidence. No 528, 30th October 1829, ... I. 224

4. The commissioner having, in reply to the above, brought to the Court's notice a construction of the 12th May 1809, "that as the magistrates are expressly authorized by Section 10, Regulation IX 1793, to punish litigious, vexatious and groundless complaints, the Court are of opinion that a similar power may be exercised by the courts of circuit in particular cases requiring it," was informed that the Court did not consider this construction at variance with that of the 30th October 1829; the former having reference to unfounded prosecutions brought by private individuals before the court of circuit at the sudder station; the latter to cases of commitment tried before a court of circuit, in which the very fact of commitment affords sufficient presumption that the complaint was not groundless or malicious. No. 530, 27th November 1829, ... I. 224

5. The power vested in magistrates of punishing groundless and malicious complaints by imprisonment not exceeding six months, should be exercised with the greatest discretion; and the commissioners of circuit, under the general powers vested in them, can receive appeals from the magistrate's decision, and pass such orders therein as they may think just and proper. No. 610, 25th November 1831, ... 1 253

6. The commissioner of circuit was informed that he was not competent, in that capacity, to fine a person under Section 10, Regulation VIII. 1825, which provides for the punishment of persons bringing false and malicious charges against an European

public officer; but that, as regards the complaint against the nazir and peons of the magistrate's office, he possessed, as superintendent of police, the powers of magistrate in the punishment of false and malicious complaints. No 754, C. C. 1st February 1843, II. 60

7. If, in a petition presented to a session judge, on the part of an European British subject, from the decision of a magistrate, the public character of that officer is calumniously and maliciously aspersed, the session judge may punish the offender as contempt of court. [*This Construction has been superseded by Act XXX.* 1841.] No. 1098, C. C. 14th July, W. C. 4th August 1837,..... II. 313

8. A person preferring a false and malicious complaint before a daroghá, but not sworn to the truth of it, is not liable to punishment under the provisions of Section 5, Regulation VII. 1811. No. 1189, C. and W. C. 14th December 1838, ... III. 40

9. A merely litigious appeal is not punishable by a magistrate, but if a prosecutor who has been dismissed by a subordinate court persist in bringing before a magistrate a charge evidently malicious or grossly exaggerated, it would be competent to that functionary to punish him under Section 5, Regulation VII. 1811. No. 1208, C. C. 1st April, W. C. 21st June 1839,..... III. 49

10. A magistrate is not competent to award punishment for a false complaint made before the revenue authorities; no case connected with such complaint having originated in his court; his power being restricted to the cognizance and disposal of those cases only that may be primarily investigated before him. No. 1220, W. C. 31st May, C. C. 5th July 1839,..... III. 54

MANAGER OF ATTACHED ESTATES.

See "Attachment," Nos. 1, 3, 4, 5, 7, 10.

MANAGER OF THE ESTATE OF AN ABSENTEE.

1. Held that a person vested with the management and superintendance of the property of an absent party, under a document authorising him to defend all suits, and appoint and remove *mokhtears* or agents, and vakeels, may also appoint special agents under Regulation XII. 1833. No. 1268, W. C. 20th December 1839, C. C. 20th March 1840, ... III. 70

MANAGER UNDER THE COURT OF WARDS.

See "Guardians and Minors," *passim*.

MARRIAGE.

1. All suits and complaints regarding marriage must be heard in the civil, and not in the criminal courts. No. 148, 31st March 1814,..... I. 46

2. A case of the clandestine marriage of a ward (also a minor) placed under a guardian appointed under Regulation I. 1800, is not cognizable in the criminal court. No. 637, 27th May 1831, ... II. 9

MERITORIOUS SERVICES

See "Commission on Stolen Property," Nos. 1 and 2.
See "Rewards," Nos. 2, 3, 4, 5.

MESNE PROFITS.

See "Rent-free Lands, Resumption of," No. 26.

MILITARY CANTONMENTS, COURTS, &c. CIVIL.

1. Native invalids attached to the invalid battalion [who are understood to be employed as guards and sentries] must be considered as coming within the description in Section 10, Regulation XV. 1816, of "native officers and soldiers entertained in regular corps, and on the actual strength of the army on the establishment of Fort William," and consequently entitled to the benefit of the regulation in question. No. 264, 29th January 1817, ... I. 92

2. The decision of a sudder ameen against a person amenable to military law, the cause of action being under 200 rupees, was considered null and void, as the suit was not cognizable by the civil authorities. The plaintiff was left to prefer his suit to the military court of requests. No. 498, 27th March 1829. ..... II. 212

3. European British subjects registered as attached to bazars and residing in cantonments, British soldiers, officers, &c. are amenable to the military court of requests for sums not exceeding 400 rupees, and to the civil courts in suits exceeding that sum. European foreigners, native soldiers, natives registered and residing in cantonments, are subject to the military court of requests in suits not exceeding 200 rupees, and to the civil courts in those exceeding that sum. No. 498, 27th March 1829,..... I. 212

4. Civil servants, merchants, and others who reside within the limits of a cantonment, though totally unconnected with the army, are subject during their actual residence to the jurisdiction of the military court of requests, and to no other court, in cases of personal action for debt. The residence or non-residence of a party within the jurisdiction of the court of requests, or of the Company's courts, must be determined by the circumstances of each case as it occurs. No 876, W. C. 26th March, C. C. 18th April 1834,..... II. 165

5. The salary of a military officer cannot be attached in execution of a decree of court. No. 902, W. C. 26th September, C. C. 24th October 1834, ... II. 183

6. Nor can the pay of a sepoy, but the decree-holder may proceed against his personand property. No. 1175, C. C. 21st September, W. C. 31st August 1838,..... III. 29

7. A civil court cannot entertain a suit to contest the award of a military court of requests. No. 1291, W. C. 13th February, C. C. 19th March 1842, III. 78

8. The provisions of Regulation XV. 1816, are applicable to native officers and soldiers of irregular corps on service in Affghanistan, i. e. on foreign service. No. 1335, W. C. 26th April, C. C. 20th May 1842,..... III. 90

MILITARY CANTONMENTS, COURTS, &c. CRIMINAL.

1. By the rules contained in Sections 15, 16, and 17, Regulation XX. 1810, the military authority in cantonments extends only to petty offences committed within the limits of a cantonment by a person, who is a retainer of the army, the servant of an officer, or registered as attached to the bazar; the more grievous offences are cognizable by the magistrate exclusively, by whomsoever perpetrated, whether within or without the limits of a cantonment. No. 392, 10th June 1825, ... I. 164

2. A magistrate cannot proceed under Regulation IV. 1820, against a witness who refuses to be sworn before a court martial. [*Superseded by Section 6, Act XI.* 1841.] No. 401, 18th August 1825, I. 168

3. A sepoy belonging to a detachment at Buxar, having shot and killed a havildar, while mounting guard at the fort gate, held that the case is cognizable by the civil authorities. No. 760, 15th February 1833, ... II. 84

4. The commanding officer of a military cantonment cannot take the information of a prosecutor and witnesses on oath; he should arrest the offender, if found within the limits of cantonment, and deliver him over to the magistrate. No. 1044, W. C. 9th September, C. C. 14th October 1836, ... II. 279

5. A magistrate is not competent under Regulation XX. 1810, to pull down houses in a military cantonment, and eject their possessors merely on the requisition of the commanding officer. No. 1119, C. C. 15th December, W. C. 29th December 1837, ... II. 332

MILITARY FORCE.

1. When a magistrate applies for the aid of a military force, he is to transmit to the court of circuit, a copy of his report to Government; and the court are to report their sentiments to Government, if circumstances appear to require it; but not to issue any direct orders to the magistrate. [*See also Circular Orders, Nizamut Adawlut, 17th December* 1830, *No.* 68, *vol. II. and* 2d *February* 1838, *No.* 7, *vol. III. page.* 4] No. 40, 4th July 1808, ... I. 10

MILITARY PURPOSE, SUPPLY OF CARRIAGE FOR.

See "Carriage supply of, for Troops and Travellers," *passim.*

MILITARY STORES.

1. Charcoal is not, considered to be a military store liable to seizure and confiscation under Section 31, Regulation IX. 1810. No. 84, 3d April 1811, I 90

MINORS.

See "Guardians and Minors," *passim.*

MINUTES OF THE JUDGES OF SUDDER DEWANNY AND NIZAMUT ADAWLUT.

1. Minutes recorded by the judges of the court on a question of general importance and submitted to Government, are not to be considered as public documents: consequently copies should not be granted to private individuals on their application. No. 718, 21st September 1832,..... II. 56

MISCELLANEOUS CASES, CIVIL.

1. Principal and other sudder ameens may be employed in the adjustment of accounts, or in the investigation of disputes, or special matters of account, fact, or usage, connected with the execution of decrees passed in the judge's court. No. 761, W. C. 22d February, C. C. 15th March 1833, ... II. 85

No 815, W. C. 28d August, C. C. 18th November 1832, ... II 119

2. The spirit of Clause 2, Section 4, Regulation XXVI 1814, which authorises reviews of judgment, is applicable to miscellaneous cases. No. 1240, C. C. 13th September, W. C. 4th October 1839, III. 64

MISCELLANEOUS CASES, CRIMINAL.

1. A "criminal trial" involves a judicial investigation on a criminal charge and a criminal award, and is appealable to the commissioner [or session judge] and eventually to the Nizamut Adawlut. In all other cases which are designated "cases of a miscellaneous nature other than criminal trials," no appeal lies to the Nizamut Adawlut: the appeal lies to the commissioner [or session judge] with a reservation of a further appeal to the Governor General in Council, in those cases in which the party aggrieved may prefer that course instead of resorting immediately to the civil courts, as in cases of forcible dispossession or other actionable cause; or in which the nature of the case may not admit of remedy by civil action, as in cases of alleged injustice towards native officers of Government, police, or ministerial, by the magistrates or others to whom they are subordinate. For the one,

the ordinary remedy by suit is provided: for the other, an appeal to Government. [*Superseded. See Act XXI. 1837, and Act XXXI. 1841.*] No. 914, W. C. 25th July; C. C. 7th November 1834, ... II. 188

2. The magistrate, on the report of a thannadar that an affray was to be apprehended between the *zumeendars* and mortgagees of a village, caused them to execute *moochulkas* to keep the peace. An affray occurring, the magistrate levied the penalty, and the commissioner confirmed the order. The *zumeendars* preferring an appeal to the Nizamut Adawlut, it was held that the case was a miscellaneous one in which no appeal lay to the Nizamut Adawlut. [*For the present law of criminal appeal, see Act XXXI. of* 1841.] No. 954, W. C. 29th May, C. C. 26th June 1835, ... II. 213

3. On a charge of theft by a mistress against her servant, the magistrate acquitted the latter and ordered the restoration of the property found upon him. The session judge in appeal confirmed the order for acquittal, but directed that the property should be delivered to the mistress. The Nizamut Adawlut on appeal by the servant, reversed the order of the session judge and confirmed that of the magistrate. The session judge, with reference to Section 3, Regulation IX. 1831, and Section 6, Act XXIV. 1837, denied the jurisdiction of the court. Held that had the mistress applied to the magistrate to compel the servant to give up the property, and on the magistrate's refusal to interfere the session judge had ordered the delivery in appeal, his view of the case not being open to the Court's revision, would have been more correct: but as the case came before the magistrate as a criminal trial, and the accused was considered entitled to his release, the magistrate very properly ordered the restoration of the property from whom it was taken by the police. The case therefore was not a miscellaneous one, but involved the carrying out an order in a criminal trial, which order, directing the release of the accused, required that matters should be placed in the same position they were in prior to the interference of the police. [*See note above, No* 2.] No. 1275, W. C. 6th March, C. C. 3d April 1840, ... III. 71

MITIGATION OF SENTENCE.

1. The Nizamut Adawlut are competent to mitigate a sentence on judicial grounds apparent on the record of the case, and strictly connected with it. If the grounds of mitigation be personal to the prisoner, the prerogative of mercy rests with Government. No. 350, 30th September 1822, ... I. 144

MOQURREREE.

1. Section 16, Regulation VIII. 1793, relates to *sudder moqurrereedars*, holding *moqurrerees* farms from Government to the exclusion of the proprietors of the land; and Clause 5, Section 29, Regulation VII. 1799, relates to under tenants holding the lease of lands as a fixed rent from the proprietor. No. 45, 21st December 1808, ... I. 14

MOKHTARS AND MOKHTARNAMEHS.

1. Copies of *mokhtarnamehs* filed previously to the promulgation of Regulation XVI. 1824, must be written on a stamp of the same value as the original under the regulations in force when such original instrument was executed. No. 412, 27th January 1826, ... I. 173

2. *Mokhtarnamehs* filed in the courts of the moonsiffs are not liable to the stamp duty prescribed by Regulation XVI. 1824, [*nor Regulation X.* 1829.] No. 416, 14th April 1826, ... I. 174

3. *Vukalutnamehs* executed by duly authorized *mokhtars* are equally as good and valid as those executed by the parties themselves. No. 417, 28th April 1826, ... I. 175

4. Though strictly speaking no suit can be legally filed but by the parties or their *vukeels* duly authorized, [*altered by Regulation XII. of* 1833,] the Court held that certain suits filed by *mokhtars* might be tried and decided, provided the parties attended in person or appointed a *vukeel* to conduct them. No. 429, 4th August 1826, ... I. 180

5. The provisions of Sections 4 and 6, Regulation IX. 1807, and Section 2, Regulation II. 1806, clearly recognise the admission of general *mokhtars*; but in admitting or rejecting this description of agent, much must be left to the discretion of the local authority, according to the particular circumstances of each case. No. 512, 17th July 1829, ... I. 217

6. A magistrate is competent to refuse to acknowledge a *mokhtar* in his court, who may have been guilty of any gross misconduct in the execution of his duty in that capacity. No. 607, 18th November 1831, ... I. 252

7. One proved act of gross misconduct is sufficient to warrant the general rejection of the *mokhtar*. No. 809, C. C. 2d August, W. C. 6th September 1833, ... II. 114

8. The mokhtar of an absentee, with general powers of management and superintendance, has a power of attorney which authorises to defend suits, to appoint and remove *mokhtars* or agents, and specially provides for the appointment of vakeels or pleaders without any specification in regard to the appointment of agents under Regulation XII. 1833. Held that under this power, he may appoint special agents under Regulation XII. 1833. No. 1268, W. C. 20th December 1839, C. C. 20th March 1840, III. 70

MOOCHULKA OR RECOGNIZANCE TO KEEP THE PEACE.

1. A magistrate in taking recognizances, from persons subject to his jurisdiction, in his capacity of

a magistrate of the East India Company, should be guided by the provisions contained in Regulation IV. 1825, when it may appear necessary to take such recognizance in his capacity of justice of the peace, the magistrate, if in doubt, should consult the advocate general, through the Secretary to Government in the judicial department. *(Such application should be forwarded through the Sudder Court. See orders of Government 6th February 1843, Circular Orders, Sudder Dewanny and Nizamut Adawlut, 21st April 1843).* No. 446, 9th March 1827, ... I. 188

2. Section 4, Regulation IV. 1825 should not be construed to preclude persons, confined for security to keep the peace, from appealing to the court of circuit at the *sudder* station, when an order may have been passed on his case by the judge on circuit at the sessions preceding No. 460, 31st August 1827, I 194

3. An assistant to a magistrate vested with special powers under Section 2, Regulation III. 1821, is competent to direct the taking of moochulkas and security under Regulation IV. 1825. No. 529, 20th November 1829, ... I. 224

4. A magistrate is not competent to direct the daroghs to require a person to enter into a *moochulka* to keep the peace, before he has been heard in his defence; after he has heard the defence, he may, if necessary, require the party to execute such moochulka in his presence. No. 620, 21st January 1831, II. 2

5. A magistrate having asked whether he could require security to keep the peace from an European beyond the amount of penalty which he is authorized to levy under 53 Geo. III. Cap. 155, Section 105, was referred to the circular order of Government to the commissioners, dated 9th June 1830, which declares that the only proceeding for the forfeiture of recognizances to keep the peace is in the Supreme Court, consequently the amount of the penalty of such recognizances is not affected by the provisions above quoted. No. 826, 6th September 1833, ... II. 125

6. The regulations do not vest the magistrates with a general power to demand security to keep the peace, whenever there may appear grounds to sanction the measure. By Section 3, Regulation IX. 1807, the magistrate is authorized, on a complaint being preferred against an individual, to call upon him to give security to keep the peace, while the charge is under examination. By Clause 11, Section 25, Regulation XX. 1817, police daroghas may, in cases of manifest necessity, require security to keep the peace from a person apprehended, which, as in the former case, is to remain in force, while the charge preferred against him may be under investigation. By Section 2, Regulation IV. 1825, the criminal courts are competent, on the conviction of an individual of any specific offence, to require from him a *moochulka* or penal recognizance to keep the peace, and, in cases of an aggravated nature, to demand security in addition to the *moochulka;* and by Section 4 of the same regulation the magistrates may take *moochulkas* to keep the peace from persons not convicted of a specific offence. No. 831, C. C. 20th September, W. C. 13th November 1833, II. 129

7. The order of a magistrate passed under Section 4, Regulation IV. 1825, requiring a party to enter into a *moochulka* to keep the peace, if passed in a regular criminal trial, is appealable to the session judge. If passed on the report of a police daroga, or in any other miscellaneous proceeding, the appeal would lie to the commissioner of circuit. [*Both orders would now be appealable to the session judge. See Act XXVI. of* 1841.] No. 1031, C. C. 5th August, W. C. 26th August 1836, II. 271

MOOCHULKA OR RECOGNIZANCE TO SECURE ATTENDANCE IN CRIMINAL COURTS.

1. *Moochulkas* and recognizances taken from prosecutors and witnesses by the police, to secure their attendance at criminal trials, may be taken on plain paper. No. 679, W. C. 7th March, C. C. 18th May 1832, ... II. 35

2. *Moochulkas* and recognizances to secure the attendance of defendants in petty cases should be required as seldom as possible:—but if it be necessary in any particular case to take such *moochulka*, the stamp must in the first instance be provided by the prosecutor, to be refunded by the defendant at the conclusion of the case, *if the magistrate consider it proper* to order a refund. No. 1287, C. C. 23d October, W. C. 13th November 1840, ... II. 77

MOONSIFFS.

I. Appointment, Removal, &c. of Moonsiffs.

1. A judge cannot fine a moonsiff for neglect in a larger sum than 20 rupees. In cases of repeated or continued neglect or disobedience, if he consider a fine of 20 rupees inadequate for the offence, he is at liberty to suspend him, and report his conduct for the orders of the superior authorities. No. 667, 13th January 1832, ... II. 31

2 When a vacancy occurs in the office of moonsiff, the recommendation of a successor should be made, under para 8, of the resolution of Government, dated 1st November 1831, through the commissioner of revenue and circuit for the division. [*Under the rules of Government, dated 4th August* 1840, *(Circular Orders, Sudder Dewanny Adawlut, No. 97, vol. III.) persons possessing diplomas of qualification from any of the committees of examination, are entitled to be appointed to vacancies.*] No. 701, C. C. 6th July, W. C. 17th August and 26th October 1832, ... II. 46

3. A magistrate cannot entertain a charge of bribery, corruption, or extortion, against a *moonsiff*,

until the judge shall, after the requisite preliminary enquiry, have given his consent to a criminal prosecution, which should be conducted by the complainant before the magistrate, who would dispose of it as a misdemeanor. Provided, however, that this shall not prevent the judge from directing the Government pleader to prefer a charge of bribery, &c. against a *moonsiff*, and conduct the criminal prosecution on the part of Government, whenever he may deem the measure expedient for the ends of justice. No. 781, C. C. 12th April, W. C. 17th May 1833, ... II. 95

4. A judge is not competent to remove a moonsiff from one station to another without a reference, through the commissioner, to the Sudder Dewanny Adawlut. No. 832, C. C. 27th September, W. C. 18th October 1833, ... II. 130

5. A commissioner has no power to suspend a moonsiff. No. 908, W. C. 10th October, C. C. 7th November 1834, ... II. 185

6. When a judge sees ground for a criminal prosecution against a *moonsiff* for bribery or other official misconduct, he should not commit the case for trial to the sessions court, but make it over to the magistrate to be disposed of according to law, directing the Government pleader to prosecute. No. 1069, C. and W. C. 27th January 1837, ... II 295

II. Powers and Duties of Moonsiffs.

1. Native commissioners are competent to receive and decide upon claims [within the prescribed limitation and instituted before them in the first instance] for the recovery of the amount of an unjust attachment and sale of personal property. No. 103, 21st May 1812, ... I. 27

2. Suits in which the cause of action did not arise within one year previously to the institution of the suit; suits in which the moonsiffs themselves, their dependants, or an European or American, may be a party; also suits which persons may be desirous of instituting *in formâ pauperis*, which are not cognizable by a moonsiff under Regulation XXIII. 1814, may be referred either to the register, or to a sudder ameen. [*All these suits, except those in which they or their dependants are parties, are now cognizable by moonsiffs. See Act VI.* 1843.] No. 219, 17th August 1815, ... I. 71

3. Summary suits for rent are not cognizable by moonsiffs; the provisions of Regulation XXIII. 1814, intending regular suits only. No. 332, 22d December 1820, ... I. 135

4. Suits for the rent of land, and for the value of crops, trees, and fruits and other description of property detached from, and involving no right as to real property, are cognizable by moonsiffs. [By Regulation V. 1831, *moonsiffs are empowered to try suits for real property.*] No. 400, 12th April 1825, ... I. 167

No. 480, 19th April 1828, ... I. 204

5. The penalties leviable from a *zumeendar*, *talookdar*, or other person entitled to receive rent, under Clause 2, Section 51, and Clause 1, Section 63, Regulation VIII. 1793, for undue exaction of rent, or for a refusal to grant *dakhilahs*, or receipts for rent paid, are not of the nature of *personal damages*, such as moonsiffs are prohibited from trying, consequently suits for the recovery of such penalties are cognizable by moonsiffs. [*This prohibition is removed by Section* 8, *Act VI.* 1843.] No. 480, 19th April 1828, ... I. 204

6. There is nothing in the regulations to prohibit a moonsiff from trying three several suits between the same parties, the case being for the sum of 150 rupees, for each of which sums bonds were given on the same day. No. 481, 2d May 1828, ... I. 204

7. *Sudder ameens* and *moonsiffs* are not prohibited from trying suits in which other *sudder ameens* or *moonsiffs*, or their dependants, are parties. No. 692, 18th May 1832, ... II. 43

8. *A ryot* cannot remove his suit from the moonsiff's court, by merely affirming that the land for which the rent is demanded is not liable to rent. The point at issue is, not the validity of the alleged rent-free tenure, but the fact of the ryots having paid, or not paid rent for the preceding year. If this fact be proved by the village accounts, or other legal evidence, the moonsiff will pass a decree for such amount as may appear due, leaving the ryot to establish his right to hold the land as *lakheraj*, by a suit under Section 30, Regulation II. 1819. No. 696, C. C. 25th May, W. C. 6th July 1832, ... II. 45

9 Suits connected with arrears or exaction of rent may be received by *moonsiffs* on quarter stamp, whether instituted by *ryots* or under tenants resisting undue demands, or *zumeendars* or others claiming their just dues. No. 714, C. C. 31st August, W. C. 5th October 1832, ... II. 55

10. *Moonsiffs* may try suits for the rent of *lakheraj* land, *but not for the "property," or proprietory right in such lands.* [*Superseded by Sec.* 8, *Act VI.* 1843.] No. 719, C. C. 21st September, W. C. 26th October 1832, ... II. 57

No. 950, W. C. 1st May, C. C. 10th July 1835, ... II. 210

11. Cases in which the collector is a party cannot be referred to a *moonsiff*. [*Superseded by Sec.* 6, *Act VI.* 1843.] No. 801, W. C. 5th July, C. C. 2d August 1833, ... II. 109

12. *A moonsiff* may try a suit brought by a holder against his tenant, to enhance the rent payable by the latter. [*Neshust i jumma.*] No. 811, C. C. 2d August 1833, ... II. 115

13. The moonsiffs cannot entertain suits for the property or possession of rent-free land, even though the circumstance of the land being rent-free or otherwise, be not disputed by the parties. [*Superseded by Section* 8, *Act VI.* 1843.] No. 825, C. C. 6th September, W. C. 4th October 1833, ... II. 125

14. A collector cannot refer a summary suit to a moonsiff to be tried as a regular suit. No. 879, C. C. 11th April, W. C. 2d May 1834, ... II. 168

15. Suits for the recovery of damages said to be sustained from not having been allowed to cultivate his land as a *khoodkasht ryot*, or for loss sustained by his land having been kept out of cultivation by the opposition of the defendant having prevented the plaintiff from receiving his customary share of water to irrigate his field, are cognizable by moonsiffs, such damages not being considered of a personal nature. [*Moonsiffs may now take cognizance of suits for personal damages, see Section* 8, *Act VI.* 1843.] No. 919, W. C. 5th December, C. C. 26th December 1834, ... II. 193

16. A suit for a piece of rent-free land and a house situated thereon, under a deed of sale, which includes the purchase money of both house and land is not cognizable by a moonsiff. [*Superseded by Section* 8, *Act VI.* 1843.] No. 950, C. C. 1st May, W. C. 10th July 1835, ... II. 210

17. A *moonsiff* cannot fine for a litigious or vexatious suit, but may award damages to the defendant; the decree, unless appealed from, will be executed like other decrees, without reference to the judge. No. 966, C. C. 17th July, W. C. 28th August 1835, ... II. 220

18. Regular suits for indigo, instituted under Regulation VI. 1823, in which the amount or value of claim may not exceed 300 rupees, and in which neither party may be an European or American, are cognizable by moonsiffs. [*Moonsiffs may now try suits in which Europeans or Americans are parties. See Section* 8, *Act VI.* 1843.] No. 1092, W. C. 2d June, C. C. 23d June 1837, ... II. 310

19. Although suits involving indemnificatory claims to an arbitrary amount of damages in respect to marriage, on account of breach of contract, or in regard to slander on account of loss of character, are not cognizable by moonsiffs; yet a claim on account of a specific loss sustained by expenses actually incurred in prosecuting a marriage, afterwards broken off, would not be included in the prohibitory rule, but should be regarded in the light of any other claim for money or personal property within the competency of a *moonsiff* to decide. [*Moonsiffs may now take cognizance of suits for personal damages. See Section* 8, *Act VI.* 1843.] No. 1257, C. and W. C., 1st November 1839, ... III. 67

20. Held that an *undefended* suit for an instalment below 300 rupees, on a bond for an aggregate sum exceeding that amount; also an *undefended* action for an arrear of rent below 300 rupees, due on lease for a larger sum, are cognizable by a *moonsiff*. No. 1304, C. C. 16th July, W. C. 13th August 1841, ... III. 81

21. The prohibition contained in Clause 2, Section 13, Regulation XXIII. 1814, does not extend to summary suits, and *moonsiffs* are competent to try the fact of possession by an European of land attached by them in execution of decree, in the same manner as they can enquire into the possession of lakheraj land, as ruled by Constructions 798 and 1064. [*Superseded by Section* 8, *Act VI.* 1843, *which removes the prohibition against the entertaining by a moonsiff of a suit in which an European is a party.*] No. 1373, C. C. 27th January, W. C. 15th February 1843, ... III. 101

III. Process and Practice in the Courts of Moonsiffs.

1. Notice to defendant in suits pending in the moonsiffs' courts must be served by the plaintiff himself, or through any other person he may choose to employ for that purpose, the remuneration of that person being perfectly voluntary. [*By Section* 5, *Regulation VII.* 1832, *moonsiffs are authorized to issue their processes through registered peons.*] No. 400, 12th August 1825, ... I. 167

2. *Mokhtarnamehs* in the moonsiffs' courts are not subject to any stamp duty. No. 416, 14th April 1826, ... I. 174

3. Regulation V. 1831, making no alteration in the rules in force before its enactment, in regard to the issue of the processes of moonsiffs, such processes are to be issued under those rules. [*But see Section* 5, *Regulation VII.* 1832.] No. 701, C. C. 6th July, W. C. 17th August and 26th October 1832, ... II. 46

4. When a defendant in a suit pending before one *moonsiff* resides in the jurisdiction of another, it is sufficient to have the process backed by the moonsiff of the division in which the defendant resides. No. 701, C. C. 6th July, W. C. 17th August and 26th October 1832, ... II. 46

5. In case of the resistance of the process of a *moonsiff*, he should report the case for the orders of the judge, as required in the instances provided for by Sections 23, 31 and 42, Regulation XXIII. 1814. [*Superseded by Section* 4, *Act VI.* 1843.] No. 701, C. C. 6th July, W. C. 17th August and 26th October 1832, ... II. 46

6. The rule contained in Section 29, Regulation XXIII. 1814, provides for the service of processes by pauper as well as other plaintiffs. No. 701, C. C. 6th July, W. C. 17th August and 26th October 1832, II. 46

7. The rules in Clause 4, Section 6, Regulation V. 1831, which require a *moonsiff* to issue a notice for the attendance of claimants to the property sued for, do not apply to the courts of the zillah and city judges or sudder ameens. No. 706, C. C. 20th July, W. C. 17th August 1832, ... II. 50

8. Petitions putting in such claims should be considered as applications "in relation to matters pending" before the court; and as *moonsiffs* are omitted in Article 7, Schedule B, Regulation X. 1829, and with reference to Clause 2, Section 9, Regulation V.

1831, such applications in the court of a *moonsiff* need not be written on stampt paper. No. 706, C. C. 20th July, W. C. 17th August 1832, ... II. 50

9. *Moonsiffs* must still proceed as heretofore, making a reference to the judge before returning security from defendants or proceeding to attach property in default of such security in cases still pending. [*Section 4, Act VI.* 1843, *empowers moonsiffs to demand security from defendants without reference to the judge.*] No. 772, W. C. 29th March, C. C. 26th April 1833, ... II. 89

10. Other evidence than that of the serving peon is required to prove the issue of process to defendants in *moonsiffs'* courts. No. 775, W. C. 4th April, C. C. 3d May 1833, ... II. 90

11. As pleadings, applications for filing exhibits and for the attendance of witnesses, and copies of decrees in suits tried by *moonsiffs*, need not be written on stampt paper, so petitions presented to those officers under Section 7, Regulation VII. 1832, for the execution of their decrees, as well as *vakalutnamehs* filed in cases before them, should be received on plain paper. No. 798, C. C. 14th June, W. C. 19th July 1833, ... II. 106

No. 950, C. C. 1st May, W. C. 10th July 1835, ... II. 210

12. Construction 859 regarding the power of moonsiffs to fine for default, is rescinded by Circular Orders, Sudder Dewanny Adawlut, No. 153, dated 20th August 1841. No. 859, 7th February 1834, II. 153

13. The peons attached to the moonsiffs' courts under the provisions of Section 5, Regulation VII. 1832, are intended exclusively for the execution of judicial processes, and should not be employed in the distraint and sale of property for arrears of rent. No. 861, W. C. 7th February, C. C. 28th February 1834, ... II. 155

14. A collector cannot, without application to the judge, issue a perwanneh to a moonsiff to sell personal property and houses attached by his nazir for arrears of public revenue. No. 918, C. C. 28th November, W. C. 26th December 1834, ... II. 193

No. 989, C. C. 28th November, W. C. 26th December 1835, ... II. 237

15. A judge should not interfere in regard to the remuneration of their *vakeels* by the parties in the *moonsiffs'* courts. No. 990, C. C. 11th December 1835, W. C. 2d January 1836, ... II. 237

16. When a judge has modified or confirmed the order of a *moonsiff* imposing a fine, he may refer the order to the *moonsiff* for execution. [*Section 4, Act VI.* 1843, *empowers moonsiffs to levy fines without reference to the judge.*] No. 1020, C. C. 1st July, W. C. 22d July 1836, ... II. 263

17. A *moonsiff* may depute an officer to sell property in execution of his own decree, but not when directed by a superior authority to perform that duty. No. 1050, C. C. 30th September, W. C. 2d September 1836, ... II. 283

18. Section 10 [which requires a record of the points at issue] and Section 12 [which requires the issue of an eight days' notice before the hearing of a suit] of Regulation XXVI. 1814, are not applicable to *moonsiffs*. No. 1226, W. C. 21st June, C. C. 2d August 1839, ... III. 56

19. The processes of *moonsiffs* intended to be served on another district should be issued through the channel and under the signature of the judge. [*Superseded by the Circular Order, Sudder Dewanny Adawlut, dated 11th August* 1843.] No. 1235, W. C. 11th July, C. C. 9th August 1839, III. 59

20. A *moonsiff* has the power of calling for the record of a case from any court, [such call being made through the judge of the district to which he is attached,] when any particular circumstances render it necessary for him to do so. But in general, if any particular paper is required, the party who wishes to file it should obtain an attested copy in the usual manner. No. 1259, C. C. 1st November, W. C. 6th December 1839, ... III. 68

21 A moonsiff is competent to ascertain the fact of resistance of a process of his court or other contempt, and to determine the amount of the fine, which *in his opinion, ought to be levied from the offender*: but before proceeding to levy the fine should report the case for the orders of the judge. [*See note on No. 16.*] No. 1262, W. C. 16th November 1839, C. C. 3d January 1840, ... III. 69

22. When a suit for an amount not exceeding 300 rupees is referred to a sudder ameen, in consequence of some special circumstance taking it out of the cognizance of a *moonsiff*, it falls within the rule of Section 5, Regulation XXV. 1837, and is subject to the stamp duty prescribed for suits in the *sudder ameens'* courts. No. 1277, C. C. 10th April, W. C. 24th April 1840, ... III. 73

23. The written notification, inviting claimants to property contested in *moonsiffs'* courts, prescribed by Clause 4, Section 6, Regulation V. 1831, should precede the notice to the defendant: claimants coming forward in obedience to such proclamations are liable to bear a proportion of costs. No. 1293, W. C. 30th April, C. C. 30th July 1841, ... III. 78

24. A *moonsiff* imposing a fine on a ministerial officer cannot levy it without obtaining the sanction of the judge: nor can he remit a fine without permission of the same authority. [*See Circular Order, Sudder Dewanny Adawlut, 16th September* 1842, *and note on No. 16.*] But if the order imposing the fine has not been signed by the moonsiff, he may remit it of his own authority. No. 1295, C. C. 21st May, W. C. 18th June 1841, ... III. 79

25. The enquiry to be made by the moonsiff under Clause 4, Section 6, Regulation V. 1831, is limited to the right of the claimants in the property actually sued for, and cannot extend to the entire estate of the deceased. No. 1300, C. C. 18th June, W. C. 9th July 1841, ... III. 80

26. A suing B for possession of real property in virtue of a deed of sale in the *moonsiff*'s court, the rights and interests of B in the property *after* the institution of the suit, but *before* the decision, are sold by the collector in satisfaction of a decree to C. Held that it is competent to the *moonsiff* to receive, as an amended plea, including C among the defendants, such amended plea not being considered as a supplemental plaint which a *moonsiff* is not competent to receive. No. 1908, W. C. 28th August, C. C. 17th September 1841,..... III. 82

27. Clause 1, Section 27, Regulation XXVII. 1814, which authorises the *moonsiff* to dismiss the plaintiff's suit, if, after a notice of ten days has been suspended in the court house, he fail to attend to carry on the suit, is not affected by Act XXIX. 1841, which only provides for the dismissal of suits which, under the rule heretofore in force, have been wont to remain longer than six weeks. No. 1321, W. C. 18th February, C. C. 9th April 1842,..... III. 86

IV. Appeals from Decisions of Moonsiffs.

1. The orders of the zillah and city judges in suits decided by *moonsiffs and sudder ameens* being final, the Court of Sudder Dewanny Adawlut cannot exercise in such suits the powers vested in them by Clause 2, Section 2, Regulation IX. 1831, and this whether the judge's decision was passed before or after the enactment of Regulation V. 1831. [Act III. 1843, allows a special appeal to the Sudder Dewanny Adawlut.] No. 688, W. C. 27th April, C. C. 8th May 1832,..... II. 41

2. No appeal lies to the Sudder Dewanny Adawlut from the order of a judge dismissing a *moonsiff*'s *vakeel*. No. 846, C. C. 6th December, W. C. 27th December 1833, ... II. 142

3. In the event of the plaintiff being non-suited under the provisions of Article 8, Schedule B, Regulation X. 1829, on the ground of the value of the thing claimed being underrated in the proportion of 10 per cent., though a summary appeal would not lie under Section 3, Regulation XXVI. 1814, the principle of Section 4, Regulation XIII. 1806, may be considered to apply; consequently a summary appeal may be had from the decision in such case of a principal *sudder ameen* and *sudder ameen*. [*and, since the enactment of Act XXII. 1838. of a moonsiff.*] No. 872, W. C. 21st February, C. C. 24th October 1834, ... II. 163

*** The decisions of *moonsiffs* appointed under Regulation V. 1831, are not reversible without appeal on the ground of irregularity or error, and no appeal on such ground is admissible, after the lapse of the prescribed period for appealing, unless good and sufficient cause be shewn for the delay which may have occurred in excess of that period. No. 979, C. C. 11th September, W. C. 2d October 1835, II. 228

5. When it may appear to the Sudder Dewanny Adawlut that a moonsiff or sudder ameen has tried a suit, which from its amount or other cause, was not legally within his cognisance, and the zillah or city judge has decided an appeal therefrom on its merits, without adverting to this fact; the court will admit a summary appeal, and, considering the original decision of the sudder ameen or moonsiff, and the decision of the zillah judge thereof, equally null and void, will quash all the proceedings in the case, and direct the judge to cause the original suit to be tried *de novo* by the authority competent to do so. [*This construction has been superseded on the ground of the jurisdiction of the Court in such cases being barred by the posture rule in Clause* 1, *Section* 28, *Regulation V.* 1831, *that the decisions of the zillah and city judges in appeal from the decisions of sudder ameens and moonsiffs shall be final,* "*any thing in the existing Regulations to the contrary notwithstanding,*" *and has been revoked by the Circular Order, Sudder Dewanny Adawlut, dated* 26*th September* 1842. *See note on No.* 1.] No. 1003, 18th March 1836, ... II. 249

V. Execution of Decrees of Moonsiffs.

1. In cases of execution of decrees in which the defendant may reside, or the property to be attached, be situated in the division of a different *moonsiff* from the one who passed the decrees, the judge should refer the execution to the former. No. 703, 6th July 1832, ... II. 46

2. *Moonsiffs* may be employed in giving possession in execution of their own decrees of all property not being land paying revenue to Government. They are also competent, under Section 51, Regulation XXIII. 1814, with the authority of the judge to give possession of land paying revenue to Government, in execution of any decree which may not have been passed by the moonsiffs themselves. [*See Section* 7, *Regulation VII.* 1832.] No. 701, 6th July 1832, ... II. 46

3. Moonsiffs, in common with other judicial officers, are competent to try the fact of possession of *lakhiraj* lands attached by them in execution of their decrees. Nos. 798, C. C. 14th June, W. C. 19th July 1838, ... II. 106

No. 1054, C. C. 14th October, W. C. 4th November 1836, ... II. 285

4. A moonsiff may sell instruments of husbandry in execution of a decree. No. 962, W. C. 26th June, C. C. 31st July 1835, ... II. 219

5. Act I. 1839, does not deprive the moonsiffs of the power of selling property in satisfaction of decrees passed by themselves for the recovery of arrears of rent. No. 1219, C. C. 31st May, W. C. 21st June 1839,..... III. 53

6. A judge is not competent to transfer, of his own authority, to the principal sudder ameen, applications

for the execution of moonsiffs' decrees [such moonsiffs being appointed under Regulation V. 1831.] All decrees passed by moonsiffs must, under Section 7, Regulation VII. 1832, be enforced by those officers, except under such circumstances as would have precluded them by law from themselves trying and determining a regular suit. No. 1223, W. C. 7th June, C. C. 12th July 1839, ... III. 56

7. Parties objecting to the sale and transfer of property in execution of decrees, may petition the *moonsiffs'* courts on plain paper. No. 1278, W. C. 5th June, C. C. 26th June 1840..... III. 73

VI. Miscellaneous Matters concerning Moonsiffs.

1. *Sudder ameens* and *moonsiffs* are not considered to be native officers, who are prohibited by Section 8, Regulation XIII. 1793, Regulation XII. 1795, and Section 11, Regulation XII. 1803, from interfering publicly or privately in suits or matters pending before the judge's court. No. 520, 21st August 1829, ... I. 221

2. Applications for the erection and repair of *moonsiffs' cucherries* and other similar contingencies should be made direct to Government. No. 701, C. C. 6th July, W. C. 27th August and 26th October 1832, ... II. 47

3. A *moonsiff* or other competent officer called upon to sell property attached for rent is entitled to be reimbursed, expenses actually and necessarily incurred by him, though no sale should take place; and if such expences be not paid, he is authorized to realize them by the sale of such part of the attached property as may appear necessary for the purpose. [*Act I. of 1839, cancels the power of moonsiffs to act as agents for the sale of property attached for arrears of rent.*] No. 714, C. C. 31st August, W. C. 5th October 1832, ... II. 55

4. Moonsiffs are not entitled to receive commission on sales conducted in execution of their own decrees; but only on those which they may hold in execution of the decrees of other courts. No. 861, W. C. 7th February, C. C. 28th February 1834, II. 155

5. *Moonsiffs* may depute *ameens* to make local investigations on regular suits pending before themselves. But they cannot depute a person to make such investigation as they themselves have been directed to make by other courts. If the *moonsiff* cannot leave his station to make such investigations without materially interfering with his special duties, he should represent the circumstance to the judge, who may depute another person to perform the duty. No. 863, C. C. 14th February 1834,..... II. 155

6. *Moonsiffs* are not liable to any deduction from their salaries, when absent from their station, with the permission of the judge, on any of the established native holidays. No. 953, C. C. 22d May, W. C. 8th May 1835, ... II. 213

7. The law does not require that the judge should confirm all appointments by the native judges of the ministerial officers of their respective courts. The interference should be restricted to prevent the appointment of improper persons, and the dismissal without good and sufficient reason of those already appointed. No. 1160, W. C. 27th July, C. C. 17th August 1838,.....III. 18

8. The power to receive security in cases of distraint for arrears of rent, which was conferred on moonsiffs under Section 16, Regulation V. 1812, in virtue of their office as commissioners for the sale of distrained property, necessarily ceases with the withdrawal of the commission under Act I. 1839. No. 1255, C. C. 18th October, W. C. 22d November 1839,..... III. 66

MORTGAGE.

1. In a case of mortgage granted prior to the 20th March 1780, on condition that the appellant should retain possession, and enjoy the profits of the land mortgaged, until the principal sum lent should be repaid, [the annual profits being given in lieu of interest;] the court dismissed the claim of the appellant to recover the principal sum lent, with 12 per cent interest, under Section 10, Regulation XV. 1793, and decreed that the parties should abide by their engagements, on the ground that the section cited was intended to benefit the mortgager, and not applicable to this case, in which it appears that the mortgagee had received less than 12 per cent. from the land. No. 15, 18th December 1805, ... I. 5

2. The provisions of Section 8, Regulation XVII. 1806, do not entitle the mortgagee to be put in possession, by judicial process, of the property, though stated to be unredeemed at the expiration of the period notified, if the mortgager deny his right to possession; the judge, in such case, cannot put the mortgager in possession on a summary investigation, or otherwise than by a regular suit. If the mortgager, on being called on to shew cause why the mortgagee should not obtain possession of the land, should deny the right of the mortgagee; the question of right can only be determined by a regular suit in the civil court. No. 80, 14th March 1811, ... I. 19

3. An action on the part of the mortgagee for possession at the expiration of the period of mortgage, will not lie against the mortgager who disputes the claim, until application has been made to foreclose, as directed in Section 8, Regulation XVII. 1806. No. 105, 25th June 1812, ... I. 28

4. The duty of the civil courts on application for the foreclosure of mortgages, is clearly laid down in the Circular Order, Sudder Dewanny Adawlut, 22d July 1813. No. 131, 22d July 1813,..... I. 38

5. The period of one year allowed for the redemption of mortgages, must be calculated from the

date of the notification to the mortgager; and not from the date on which it may have been served on him. No. 263, 23d January 1817, ... I. 91

6. Cases brought before the civil courts, under Sections 10 and 11, Regulation XV. 1793, and Sections 9 and 10, Regulation XXXIV. 1803, for the adjustment of accounts of mortgage of real property, must be received and tried as regular suits. [*See No. 14, infra.*] But if the holder of a deed of mortgage and conditional sale, object to the surrender of the mortgaged property, which may be in his possession, the court may decide the question summarily. No. 277, 9th July 1817, ... I. 99

7. On an appeal being preferred in a summary suit under Regulation XXXIV. 1803, on objections to the relevancy of the regulation to the facts of the case, the provincial courts must exercise the same discretion as in other appeals in regard to staying execution, and the zillah judge must follow the same course, as in other cases appealed. No. 331, 14th November 1820, ... I. 135

8. The borrower is entitled to recover possession summarily on depositing the principal sum borrowed, leaving the interest to be settled on an adjustment of the lender's receipts and disbursements during possession. If the borrower allege the principal sum to have been paid from the usufruct, and the lender deny the allegation, the parties must be referred to a regular suit. But if the borrower deposit the principal, merely for the purpose of recovering possession, he may sue the lender for restitution of the sum deposited, and recover it with interest on proving that it really was not due. No. 339, 25th May 1821, ... I. 138

9. The spirit and intention of Regulation XVII. 1806, appear applicable to every description of real property as well as to landed estates. No. 370, 21st September 1824, ... I. 154

10. Held that a magistrate exceeded his competency in awarding possession to the purchaser of mortgaged property, to the exclusion of the mortgager, on the plea that the mortgage had been redeemed, although the purchaser, up to the time of the dispute, had never been in possession. No. 393, 17th June 1825, ... I. 164

11. It is not required by the regulations that a copy of the deed of mortgage should be served on the mortgager, but only a copy of the application for the issue of the prescribed notice. No. 630, 11th March 1831, ... II. 7

12. A copy of the application of the mortgagee to foreclose should accompany the *perwanch* issued to the mortgager; and the mortgagee, on filing his application, should be directed to deposit the *tulubana* of the *peon*, who is to serve the *perwanch* on the other party, that the order for issuing the same may be passed without delay. No. 644, 24th June 1831, ... II. 14

13. Proprietors of estates are not entitled to the benefit of Regulation XVII. 1806, in cases of *bye-bil-wufa*, in which the period specified for redemption expired prior to the promulgation of that regulation. No. 672, 20th January 1832, ... II. 33

14. There is no provision in the regulations to authorize a summary suit in cases brought before the court under Sections 9 and 10, Regulation XXXIV. 1803, which relate only to simple mortgages. No. 830, W. C. 20th September, C. C. 18th October 1833, ... II. 128

15. Mortgaged property may be sold in execution of a decree obtained by other than the mortgagee, with a reservation of his rights and interests. No. 856, C. C. 24th January 1834, ... II. 148

16. In a case of mortgage and conditional sale, if the money be not repaid, the lender, unless good and sufficient cause be shewn, can only sue for possession of the property pledged, and has not the election of suing to recover the money or to be put in possession of the property, as he may deem most advantageous to his interests. No. 898, C. C. 5th September 1834, ... II. 182

17. In a suit by a mortgager to regain possession of the property mortgaged, the amount of stamp must be calculated on the value of the property, and not on the sum for which it was mortgaged. No. 957, W. C. 17th June, C. C. 7th August 1835, ... II. 215

18. The provisions of Clause 4, Section 3, Regulation II. 1805, apply equally to real and personal property; and no lapse of time will bar a demand founded on a deposit of money or other personal property. No. 963, W. C. 17th July, C. C. 7th August 1835, ... II. 220

19. When a mortgager has deposited the sum due in order to redeem the mortgage, the notice to the mortgagee requiring him to render up possession need not allow him the period of one year, but any reasonable period according to the distance of his residence from the *sudder* station. No. 974, C. C. 7th August 1835, ... II. 226

20. A magistrate may interfere in disputes between mortgagers and mortgagees, when such disputes appear likely to terminate in a breach of the peace; and it does not in any way affect the question, whether the mortgage have been registered or not. No. 1006, W. C. 15th April, C. C. 20th May 1836, ... II. 250

21. In a suit brought by a mortgagee for foreclosure of a mortgage, it is incumbent on the court, on such plea being urged, to enquire whether the transaction was illegal *ab initio*, and decide accordingly. No. 1140, C. C. 23d March, W. C. 2d March 1838, ... III. 9

22. If in such suit, it be proved that the prescribed notice of one year was not duly issued to the mortgager, the plaintiff ought to be nonsuited, and left to apply to have it issued. No. 1140, C. C. 23d March, W. C. 2d March 1838, ... III. 9

23. A judge, in carrying on the process required on the application of a mortgagee to foreclose, acting

purely in a ministerial capacity, is not competent to entertain or enquire into a plea of forgery set up by the mortgager. He may however enquire into any alleged misconduct on the part of his officers? No. 1179, W. C. 12th October, C. C. 2d November 1838,..... III. 31

MUHAJONS' BOOKS.

See "Account Books," *passim.*

NATIVE BRITISH SUBJECTS.

See "Foreign Territories, crimes committed in," *passim.*

NATIVE OFFICERS.

1. The provisions of Regulations XIII. 1793, XII. 1795, and XII. 1803, whereby parties injured have the option of instituting a civil action, in cases of corruption or extortion, are not considered as precluding a criminal prosecution whenever there appear sufficient grounds for it. The prosecution should be public and conducted by the vakeels of Government. No. 54, 21st November 1809, ... I. 13
No. 58, 18th March 1810, ... I. 14

2. The courts of appeal and circuit may remove of their own authority any officers whom, by Regulation VIII. 1809, they are competent to remove on a reference from the judges and magistrates. No. 62, 19th July 1810, ... I. 14

3. The provisions of Section 8, Regulation XI. 1793, and other regulations which declare native commissioners [sudder ameens and moonsiffs] liable to prosecution in the civil court, for corruption or any unwarranted and oppressive act of authority, are not meant to prohibit a criminal prosecution, in cases where the nature and circumstances of the case appear to call for it. No. 64, 11th August 1810, ... I. 15

4. There being no specific provision in the regulations for compelling native officers of Government in the judicial department, to deliver over charge of the records of their office, such cases fall within the general provisions of Section 21, Regulation III. 1793. No. 176, 3d August 1814, ... I. 55

5. A person punished for corruption or extortion in a criminal prosecution, would not afterwards be liable to the fine prescribed by Section 12, Regulation XII. 1803, though he would of course be subject to a civil action for the restitution of the money received by him. No. 231, 12th January 1816,.. I. 76

6. When a magistrate may see grounds for a criminal prosecution against a native ministerial officer on a charge of bribery or extortion, it is not necessary that such prosecution should be deferred for a civil action as provided by Regulation XIII. 1793. No. 237, 16th February 1816, ... I. 79

7. The magistrate may pass sentence of punishment on a conviction of bribery or extortion to the extent vested in him by the regulations, when such punishment may appear to him adequate: otherwise he should commit to the circuit court. No. 237, 16th February 1816,..... I. 79

8. Native doctors attached to the zillah and city jails must be considered to fall within the general description of subordinate officers attached to jails whom the magistrate may appoint and remove. No. 258, 23d September 1816, ... I. 89

9. In cases provided for by Sections 16 and 19, Regulation III. 1794, the judge, on the application of the collector, for the confinement of a defaulting tuhseeldar, or other native officer, cannot proceed in any other manner than according to the provisions of the sections cited, i. e. confine the defaulter until he pay the sum, or give up the papers demanded from him, or furnish security to institute a suit to contest the demand, which suit must be instituted and proceeded on as a regular suit. No. 282, 29th December 1817, ... I. 103

10. Ministerial officers are removeable without proof of any special act of misconduct, whenever there shall be sufficient reason to deem them incapable, or in any respect unworthy of public confidence. And the inability of a native officer to give a reasonable account of his possessing so much more property than the lawful emoluments of his office seemed to authorize, was held to be a sufficient ground for presuming him to be a person unfit for public confidence. No. 306, 3d September 1819,..... I. 124

11. The summary decree prescribed by Section 7, Regulation XVIII. 1817, adjudging the exact sum recoverable, must be passed before the judge can proceed to realize the amount embezzled by a native officer. No. 334, 29th December 1820, ... I. 136

12. The provincial court have power to rescind the order of a magistrate for the suspension of one of his officers pending an enquiry into his conduct; though they should use this power with discretion. [*Obsolete, as the provincial courts have been abolished. See Section 4, Act XXIV. 1837, which gives the control in such matters to the superintendant of police.*] They may also receive and act upon petitions from suspended officers forwarded by the dawk, provided they be written on stampt paper. No. 344, 13th July 1821, ... I. 141

13. The prohibition in Section 2, Regulation VIII. 1825, against employing, on any public duty, private servants or other persons not being public officers duly appointed, applies to *omeawars*, but cannot be construed to preclude other than the regularly appointed officers of the court from taking copies of public documents, with the sanction of the magistrate, for the use of private individuals, at the expense of those who may employ them. No. 407, 11th November 1825, ... I. 171

14. The provisions of Section 38, Regulation IX. 1810, which declares native officers in the customs department subject for extortion to imprisonment, fine, and corporal punishment, are not applicable

to native officers in the salt department. But though there is no corresponding enactment in Regulation X. 1819, the officers of the salt department are of course amenable to justice for acts of extortion under the general regulations. No. 476, 8th April 1828, ... I. 202

16. The commitment of a native officer of the civil court for embezzlement, should be made by the magistrate and not by the judge. No. 518, 7th August 1829, ... I. 220

16. *Soudder ameens* and *moonsiffs* are not considered to be native officers who, by Section 8, Regulation XLII. 1793, are directed not to interfere publicly or privately in any cause or matter depending before the court to which they may belong. No. 520, 21st August 1829, ... I. 221

17. Giving bribes to the *conduct* of public officers is punishable as a misdemeanor. No. 522, 4th September 1829, ... I. 222

18. The temporary appointment of an officer officiating in the courts, should be reported to the provincial courts. [Obsolete.] No. 578, 12th May 1830. ..... I. 242

19. Though the appointment of native ministerial officers should be reported to the commissioner immediately, they can legally act as soon as they are appointed. [See above No. 18.] No. 618, 14th January 1831, ... II. 1

20. A magistrate may entertain and investigate a charge of corruption preferred against an officer in the establishment of a commissioner of revenue and circuit. No. 649, 22d July 1831, ... II. 15

21. Though a summary enquiry into cases of embezzlement of the ministerial officers of the judge's court may be conducted by him under Section 7, Regulation XVIII. 1817, he cannot commit for that offence ; this duty being left to the magistrate, to whom the judge should submit his proceedings if grounds appear for subjecting the accused to a criminal trial. The magistrate will in such case use his own discretion in committing or releasing the accused, on a fair consideration of the evidence adduced. No. 691, 11th May 1832, ... II. 43

22. Though *thanadars* and other subordinate police officers do not come strictly within the terms of Section 9, Regulation XLII. 1793, Section 12, Regulation XII. 1793, and Section 10, Regulation X. 1806, the magistrate, if he have reason to suspect that a charge of corruption against such officer is false and unfounded, may call on the person preferring it to give security for his attendance until the final decision of the case. No 731, W. C. 2d November, C. C. 30th November 1832, ... II. 63

23. Section 8, Regulation XI. 1831, which gives commissioners control over the magistrate's orders for the appointment and removal of police officers, is applicable to the whole of the ceded and conquered provinces, and not to such parts only in which *chukeedary* establishments are entertained. No. 786, W. C. 9th November, C. C. 7th December 1832,... II. 65

24. The provincial court having commenced an enquiry into the conduct of a native officer, were informed that they should complete it, and, if they considered the case to call for exemplary punishment, direct the Government pleader to institute a criminal prosecution against the defendant before the magistrate ; but that in the event of their not deeming it necessary to adopt this measure, it would of course be optional with the prosecutor to do so himself, or to seek redress by instituting a suit against the defendant in the civil court. No. 737, C. C. 16th November 1832, ... II. 66

25. A magistrate cannot receive charge of bribery against a *mounsiff*, without the permission of the judge. No. 781, C. C. 12th April, W. C. 17th May 1833, ... II. 95

26. No report to the Nizamut Adawlut is necessary previous to the dismissal of the *serishtedar* of the magistrate's court. It should be made to the commissioner, [*since the enactment of Regulation XXIV. 1837, to the superintendent of police, if one has been appointed,*] who is competent to pass such orders as the case may require. No. 792, C. C. 17th May 1833, ... II. 103

27. Any sum actually due to a public officer as salary, is liable to be attached in execution of a decree. No 827, W. C. 9th August, C. C. 6th September 1833, ... II. 126

28. The magistrate of Burdwan was censured for arresting a police *darogha* of Beerbhoom, while in the execution of his duty, in serving a warrant issued to him by the magistrate of the latter district, and was informed that he should have postponed requiring the *darogah's* attendance until he had completed the duty on which he was deputed by his immediate superior No. 851, 26th December 1833, II. 145

29. A session judge is competent to fine an officer of the magistrate's court guilty of negligence or disrespect while in attendance at sessions. No. 882, C. C. 18th April, W. C. 16th May 1834, II. 169

30. The provisions of Regulation II. 1813, for preventing native officers making use of public money are still applicable to the native officers of the commercial department entrusted with public money, and are not affected by the provisions of Regulation IX. 1829. No. 903, C. C. 3d October, W. C. 14th November 1834, ... II. 184

31. The provisions of Clauses 4 to 7, Section 7, Regulation XVII. 1816, having been superseded as regards police officers of whatever denomination, without reference to the amount of their salaries, appeals from orders for their dismissal may be received by the commissioner, [*or since the enactment of Act XXIV. 1837, by the superintendent of police, if one have been appointed,*] from any police officer, whether his salary be above or below 10 rupees a month. No. 907, W. C. 10th October, C. C. 7th November 1834, ... II. 185

32. The Circular Order, Nizamut Adawlut, of 8th April 1818, declaring the magistrate's order for the

appointment and removal of native officers receiving a salary not exceeding 10 rupees final, remains in full force as regard to all such officers, not being police officers, who, under Section 8, Regulation XI. 1831, may appeal to the commissioner [*or since the enactment of Act XXIV.* 1837, *the superintendent of police. The Circular Order, Nizamut Adawlut, 16th September* 1842, *declares this construction superseded by Act XXXI.* 1841, *Section* 2 *of which renders all orders passed by magistrates in proceedings other than criminal trials, appealable to the session judge.*] No. 940, C. C. 27th March, W. C. 23d January 1835,..... II 205

33. Bribery and corruption on the part of native ministerial officers in the revenue department, are punishable as misdemeanors under the rules laid down in Clause 7, Section 2, Regulation LIII. 1803. No. 1002, W. C. 4th March, C. C. 25th March 1836, ... II. 248

34. A commissioner, though he should deem a person acquitted of a specific offence, to be a corrupt officer, has no authority to declare him perpetually excluded from future employ in his division. No. 1065, C. C. 16th December 1836, W. C. 6th January 1837,..... II. 292

35. A civil judge being of opinion from a summary enquiry that there are grounds for a criminal prosecution against a moonsiff, charged with certain official misconduct, including the fabrication of official papers, should make the case over to the magistrate and not make the commitment himself. No. 1069, C. and W. C. 27th January 1837,..... II. 195

36. The law does not require that the zillah judge should confirm all appointments by native judges of the ministerial officers of their respective courts. The interference of the zillah judge should be restricted to prevent the appointment of improper persons, and the dismissal, without good and sufficient reason, of those already appointed. No. 1160, W. C. 27th July, C. C. 17th August 1836, ... III. 18

NATIVE SOLDIERS.

See "Military Cantonments, Courts, &c., Civil and Criminal."

NAZIRS.

1. *Nazirs* of civil courts are not liable to pay the amount of sums due from persons who escape from their custody, unless collusion on their part be proved. Note on No. 53, 2d August 1803, ... I. 13

2. Claims against the *nazirs* of civil courts for alleged injury to parties from neglect of duty or other misconduct must be received and tried as regular suits: no summary investigation is allowed. They should be decided as speedily as possible, and security may be taken from the *nazir* to perform the judgment on such claims. No. 58, 18th November 1809, ... I. 13

3. *Nazirs* may be employed in the attachment and sale of personal property for the purpose of realizing fines, or of decrees, regular or summary, but are not entitled to receive any commission on the proceeds of such sales as mounsifs are under Section 52, Regulation XXIII. 1814. No. 509, 29th May 1829, ... I. 216

No. 587, 8th April 1831,..... I. 245

4. A *nazir* or other person deputed on his part to serve process agreeably to Section 4, Regulation II. 1806, having entered the compound of the defendant's house, is not authorized to force an entry into the house, in the event of the defendant's shutting the door against him. No. 745, C. C. 21st December 1832, ... II. 71

5. The *nazir* of the civil court is entitled to a percentage on the sale of *lawarisee* property, for that being at the disposal of Government, they may grant him a commission on the proceeds of the sale. But not on the sale of the property of a deceased person, not intestate, as this sale is extra-official, for conducting which the *nazir* can claim no remuneration but what may have been agreed on by an arrangement with the administrator. Nor can he claim a percentage on the sale of property sold in execution of decrees, nor of property sold in satisfaction of sums embezzled by public officers, such sales being in fact in execution of decrees or orders of court. No. 824, C. C. 30th August, W. C 1st November 1833, II. 124

6. If it be shewn on a civil prosecution that the *nazir* of a criminal court has wilfully misrepresented the value or sufficiency of any security, in regard to which he had been directed to enquire and report, and that loss ensued in consequence of such misrepresentation on his part, he would be liable to the payment of damages at the discretion of the court before whom the suit was brought. No. 1014, W. C. 17th June, C. C. 8th July 1836,..... II. 259

7. As no fees are leviable for the remuneration of ameens appointed under Circular Order, Sudder Dewanny Adawlut, of 18th January 1837, for investigating the sufficiency of security tendered to the Court of Sudder Dewanny Adawlut, or the circumstances of parties wishing to sue as paupers, these duties should be entrusted to the *nazir* or *moonsiff*. No. 1078, C. C. 10th March, W. C. 31st March 1837, ... II. 301

NEGLECT OF DUTY.

1. The magistrate of Benares was informed that the Court hoped he would punish neglect and misconduct on the part of watchmen, by discharging them and appointing others, rather than by inflicting corporal punishment. [*Corporal punishment abolished by Section* 2, *Regulation II.* 1834.] No. 124, 25th March 1813,..... I. 35

2. Section 6, Regulation III. 1814, is applicable only to *chowkeydars* and other description of village

watchmen, and magistrates cannot punish with stripes except for theft. [*Corporal punishment abolished by Section 2, Regulation II.* 1834.] Where therefore the magistrate had inflicted stripes, the Court of Nizamut Adawlut remitted that part of the sentence, which directed forfeiture of arrears of salary. No. 151, 7th April 1814, ... I. 47

3. Section 6, Regulation II. 1799, and Section 28, Regulation VIII. 1803, which provide for the immediate discharge of all guards of convicts, who having custody of convicts may appear to be guilty of wilful neglect, do not empower the magistrate to declare by a public order that such officer shall never be employed in the zillah court in any capacity whatever. No. 157, 26th April 1814, ... I. 48

4. A magistrate is not authorised under Clause 5, Section 5, Regulation VIII. 1809, to adjudge a *burkundaz*, from whose custody a prisoner escaped, to pay a fine equal to three months' salary. The Court ordered the restitution of what had been levied exceeding one month's salary. No. 192, 18th January 1815, ... I. 60

5. The magistrate having sentenced a *burkundaz* to corporal punishment for neglect, which punishment he can only inflict for theft, [*corporal punishment abolished by Section 2, Regulation II.* 1834,] the Court remitted the remainder of the sentence of imprisonment to which he had also been sentenced. [See however subsequent rule in Clause 1, Section 9, Regulation XIV. 1816.] No. 193, 18th January 1815, ... I. 60

6. When the magistrate may be of opinion that the punishment he is authorised by Section 19, Regulation IX. 1807, to inflict, is sufficient, in a case of connivance or other criminality in the escape of prisoners, he may dispose of the case himself, instead of committing it to the circuit court as directed by Section 6, Regulation II. 1799. No 206, 25th May 1815, I. 66

7. By Clause 5, Section 5, Regulation VIII. 1809, a specific provison [a fine equal to one month's pay] is made for neglect of duty by officers of police. But if any distinct misdemeanor beyond neglect of duty should be established, the case would fall within the magistrate's discretion under the general powers vested in him by Section 19, Regulation IX. 1807. No. 244, 15th March 1816, ... I. 82

8. A magistrate is not authorized, under Regulation XIV. 1816, or any other regulation, to sentence to hard labor a *burkundaz* found guilty merely of neglect of duty. No. 712, W. C. 24th August, C. C. 21st September 1832, ... II. 54

9. As *burkundazes*, *chowkeydars*, &c., found guilty of neglect of duty, were not formerly liable to stripes in *addition* to imprisonment, no additional period of imprisonment can be awarded in such cases under Regulation II. 1834. No. 928, W. C. 19th December 1834, C. C. 16th January 1835, ... II. 195

10. A magistrate may punish a *burkundaz* guilty of gross neglect to fine and imprisonment under the provisions of Section 19, Regulation IX. 1807, but if he think the sentence he is thereby authorised to pass insufficient, he should proceed to commit him under the rule laid down in Section 6, Regulation II. 1799. No. 1131, C. C. 16th February 1828, ... III. 5

NIZAMUT ADAWLUT.

1. The Nizamut Adawlut are competent to mitigate a sentence on judicial grounds, apparent on the record, and strictly connected with the case. If the ground of mitigation be personal to the prisoner, the prerogative of mercy rests with Government. No 350, 30th September 1822, ... I. 144

2. The concurrent opinion of two judges who agree in all points of the decision is final and conclusive, though it differ from the opinion of two other judges, who do not agree with each other. [*See also case of Moharim and others, page* 121, *Vol. II. Nizamut Reports.*] No. 526, 25th September 1829, ... I. 223

3. A summary order of the Nizamut Adawlut to the magistrate is not binding on the civil courts. No. 609, 18th November 1831, ... I. 252

4. By "criminal trials" in Section 5, Regulation IX. 1831, shall be understood the cases of persons tried for a criminal offence by any court of inferior jurisdiction. Cases in which interference with an order of an inferior court issued prior to the final judgment in such trials, should be brought before the English sittings. No. 662, 9th December 1831, II. 29

5. In trials called for by the court, no *futwa* need be taken: in those regularly referred, a *futwa* will be taken or not, as heretofore. No. 662, 9th December 1831, ... II. 29

6. In a trial for *murder*, the law officer of the circuit court acquitted the prisoner: the commissioner, dissenting, referred the trial with his opinion that the prisoner was guilty of *affray with homicide*; the law officer of the Nizamut Adawlut also acquitted: the revising judge deemed the prisoner guilty of *manslaughter*. The Court held that he was competent to dispose of the case without calling in another judge. No. 674, 27th January 1832, ... II. 33

8. It was held that the Western Court of Nizamut Adawlut were authorised to receive and act upon periodical reports and other matters, having reference to periods prior to the 1st January 1832, which on that date were not before the Presidency Court. No. 700, 6th July 1832, ... II. 46

9. The cognizance by the Nizamut Adawlut of cases connected with the management of jails, has not been withdrawn: the rule contained in Section 3, Regulation IX. 1831, not being applicable to matters of that nature. No. 746, C. C. 28th December 1832, W. C. 8th February 1833, ... II. 72

10. The jurisdiction of the Presidency Court over the province of Benares and the ceded and conquered

provinces, having been transferred by Regulation VI. 1831, to the Court of Nizamut Adawlut for the Western Provinces, it was held that the Western Court possess in those provinces, in regard to the revision of orders and sentences passed by the Court at the Presidency, before the enactment of that Regulation, the whole of the powers which could have been exercised by the latter previously to the separation of the jurisdictions. No. 799, W. C. 17th May, C. C. 14th June 1833, ... II. 1

11. The judges of the Nizamut Adawlut for the Western Provinces are competent to revise, in full court, the proceedings of one or more judges in any case connected with the districts under their jurisdiction, and to reverse or modify the sentence as may appear just and proper, provided that no sentence of a criminal court can be modified to the prejudice of the prisoner or prisoners included in it. This power may be exercised whether the sentence was passed by former judges of the Western Court, or by any of the judges of the Presidency Court. If the judge, or any of the judges who passed the original sentence, be present, the revision shall be made by him, provided that if two or more judges concurred in the order or sentence, and any of them be not present, the case must be brought before the whole Court, if it be proposed to modify or annul the order or sentence.. No. 819, W. C. 26th July, C. C. 23d August 1833, II. 120

12. The interference of the Nizamut Adawlut is now restricted to "criminal trials," i. e. cases involving a judicial investigation on a criminal charge and a judicial award. In all other cases which are contradistinguished as "miscellaneous cases," the appellate authority is transferred to the commissioner of circuit, by Section 3, Regulation IX. 1831, with the reservation of a further appeal to the Governor General in Council, in those cases in which the party deeming himself aggrieved may prefer that course, instead of resorting immediately to the civil courts, [as in cases of dispossession or other actionable cause,] or in which the nature of the case will not admit of the remedy by civil action, [as in the case of alleged injustice towards native officers of Government by magistrates or others to whom they are subordinate.] *For the former*, the ordinary remedy by suit is provided; for the latter an appeal to Government. [*Superseded. See Act XXIV.* 1837, *and Act XXXI* 1841.] No. 914, W. C. 25th July, C. C. 7th November 1834, ... II. 188

13. Held that in a criminal trial wherein differing opinions have been recorded, the sentence should issue according to the opinions of the majority, as regards each prisoner: and that where the difference only relates to the measure of punishment, the most lenient sentence should be adopted. No. 952, W. C. 15th May, C. C. 3d July 1835, ... II. 211

14. The magistrate, on a report from a thanehdar that an affray was to be apprehended between the zumeendars and mortgagees of a village, causes them to execute *moochulkas* to keep the peace. An affray occurring, the magistrate levies the penalty, and the commissioner confirms the order. The zumeendar preferring an appeal to the Nizamut Adawlut, it was held that this was a miscellaneous case in which no appeal lay to the Nizamut Adawlut. [*For the present law of criminal appeal, see Act XXXI.* 1841.] No. 954, W. C. 29th May, C. C. 20th June 1835, ... II. 213

15. It is competent to the Nizamut Adawlut to enhance a sentence on an appeal from the prisoner. [*Section 4, Act XXXI* 1841, *declares that it shall not be lawful for the Nizamut Adawlut to enhance a sentence.*] No. 1253, C. C. 4th October, W. C. 31st October 1839, ... II. 66

16. The Nizamut Adawlut may interfere with a session judge's order regarding the restoration of property, in a case in which the person accused of stealing the property had been acquitted by the magistrate and session judge. [*See note on No.* 14.] No. 1275, W. C. 6th March, C. C. 3d April 1840, ... III. 71

NONSUIT.

1 The penalty of nonsuit provided in the concluding part of Article 8, Schedule B, Regulation X. 1829, is applicable to all suits in which the conditions of the said provisions have not been complied with. No. 577, 5th November 1830, ... I. 241

2. In suits instituted prior to the promulgation of Regulation X. 1829, in which the amount of action may have been erroneously stated, the court should proceed according to the rules laid down in Section 7, Regulation XXVI. 1814; while the rules contained in the 4th para. of Article 8, Schedule B, Regulation X. 1829, are applicable to suits instituted subsequently to its promulgation. No. 687, 27th April 1832, ... II. 40

3. In the event of a plaintiff being nonsuited under the provisions of Article 8, Schedule B, Regulation X. 1829, on the ground of the value of the thing claimed being underrated in the proportion of 10 per cent., though a summary appeal will not lie under Section 3, Regulation XXVI. 1814, the principle of Section 4, Regulation XIII. 1808 may be considered to apply. Consequently a summary appeal may be had from the decision, in such case, of a principal sudder ameen, or sudder ameen, [*and since the enactment of Act XXII.* 1838, *of a moonsiff.*] No. 872, W. C. 21st February, C. C. 24th October 1834, ... II. 163

4. When the collector in his official capacity has been improperly made a defendant, the court before nonsuiting should give the plaintiff the option, if he did not appear to be actuated by an improper motive, of filing a supplementary plaint and withdrawing the collector's name. No. 1075, C. C. 21st February, W. C. 13th January 1837, ... II. 298

NOTICE.

1. The notice directed by Section 2, Regulation II. 1806, to be issued to the defendant, requiring his attendance, is not applicable to cases of summary process provided for by Section 15, Regulation VII. 1799. No. 30, 18th July 1807, ... I. 8

2. When the notice prescribed by Clause 8, Section 15, Regulation XXVI. 1814, and Section 7, Regulation VII. 1825, [calling on defendant to shew cause why the decree against him should not be executed,] cannot be served on the defendant, a proclamation requiring him to shew cause should be issued and affixed to the defendant's house. No. 1236, C. C. 19th July, W. C. 16th August 1839, ... III. 60

NUWAB NAZIM.

1. The Governor General's agent at Moorshedabad, having asked whether a suit could be instituted in the manner prescribed by Regulation IV. 1812, in favor of his highness the Nuwab Nazim, was informed, that the solution of his question depended on whether Government consider his highness the Nazim as a sovereign prince or not, and was recommended to apply direct to Government for information on that point. No. 377, 8th April 1825, I. 156

OATH.

I. Administered by a Collector.

See "Collectors," Nos. 3, 33.

II. Administered by an Officer Commanding.

See "Military Cantonments, &c. Criminal," No. 4

III. Of an Assistant to a Magistrate.

See "Assistant to Magistrate," No. 8.

IV. Of Commissioners under Act XXVI. 1830.

See "Public Officers, Complaints against," No. 1.

OPIUM.

1. The penalty prescribed by Clause 4, Section 18, Regulation VIII. 1824, against persons convicted of illicit dealings in opium, cannot, in any case, exceed 500 rupees, whether there be one or more persons concerned in the illicit dealing; and should include the value of the opium forfeited. Thus if the opium be valued at 200 rupees, and four persons convicted of the illicit dealing, each should be amerced in the sum of 75 rupees, so as to make up, with the value of the opium, the sum of 500 rupees. No. 494, 20th February 1829, ... I. 210

2. Though a magistrate has no power to search a house for the discovery of contraband opium *as such*, he may search for the discovery of opium or any other deleterious drug, which, from information before him, he may have reason to believe has been used as an instrument of death, and of which he considers it necessary, for the ends of justice, that a discovery should be effected. No. 1241, W. C. 16th August, C. C. 20th September 1839, ... III. 61

ORIGINAL SUITS.

I. What are to be heard as Regular Suits.

1. A promise to pay a debt contracted by the raja of Cojung in Cuttack, before the 14th October 1803, such promise having been made subsequent to that date, does not constitute a ground of action. No. 59, 28th March 1810, ... I. 14

2. The restriction in Section 6, Regulation XIV 1805, from hearing suits in which the persons specified therein are parties, is not applicable to cases in which the cause of action arose subsequently to the conquest of Cuttack, i. e. 14th October, 1803. No. 122, 17th March 1813, ... I. 35

3. Claims to pensions payable by Government are not cognizable by the civil courts. No. 230, 12th January 1816, ... I. 76

4. The suit of a defaulting revenue officer to contest the justness of the collector's demand against him, must be instituted and proceeded on as a regular suit. No. 282, 29th December 1817, ... I. 103

5. On a compromise of theft under Section 7, Regulation XII. 1818, the civil court cannot entertain a suit by the injured party to compel the offender to restore the value of the property stolen No. 318, 7th July 1820, ... I 131

6. The suit of an alleged revenue defaulter to contest the collector's demand against him, must be instituted and proceeded on as a regular suit. No. 330, 17th November 1820, ... I 135

7. A collector cannot be sued for declining to pay a pension, the original title to which has not been previously recognized and confirmed by the revenue authorities or Government. No. 343, 6th July 1821, ... I. 140

8. The civil courts are not competent to take cognizance of a suit for actual costs against a plaintiff, whose complaint was dismissed by a criminal court No. 367, 2d July 1824, ... I. 153

9. An action will not lie against a register for acts done in his official capacity under the rules contained in Regulation VIII. of 1819, for the sale of *putnee* talooks. No. 440, 8th December 1826, I. 185

10. A suit against an auction purchaser and the late proprietor, by a person claiming an interest in land sold by a collector for public arrears and delivered to the purchaser, must be instituted and proceeded on as a regular suit. No. 469, 8th February 1828, I. 198

11. A suit for the recovery of money said to have been given as a bribe to the collector's serishtedar, must be received and proceeded on as a common action of debt.' No. 857, 2d August 1833, ... II. 113

12. Suits for rent transferred by the collector to the subordinate judicial tribunals under Section 15, Regulation VIII. 1831, must be entered and tried as regular suits. No. 951, W. C. 8th May, C. C. 22d May 1835, ... II. 211

13 A suit against a person, who has taken charge of attached property and thereby rendered himself responsible for the safe custody thereof, for damages which may have arisen from his failing to do so, must be received and tried as a regular civil suit; no summary process can be instituted against him. No. 958, W. C. 19th June, C. C. 17th July 1835, ... II. 216

14. Miscellaneous orders passed in execution of a decree in regard to mesne profits, interest, and other matters in dispute between the parties in a suit, which may be involved in the decision, must be looked upon as a necessary process for carrying into effect the original intentions of the court passing the decree, in respect to a point in which it may in fact be said already to have passed a formal judgment; and cannot therefore be considered as constituting a new ground of action. No. 1129, W. and C. C. 9th February 1838, ... III. 4

15. A summary award by a magistrate of wages to a servant under Section 6, Regulation VII. 1819, cannot be contested by a civil action, nor can a civil court issue an injunction to the magistrate to stay execution of his order. No. 1158, C. C. 13th July, W. C. 22d June 1838, ... III. 17

16. A civil court is not competent to entertain an action to contest the award of a military court of requests. No. 1291, W. C. 13th February, C. C. 19th March 1841, ... III. 78

II. By whom and against whom original suits may be instituted.

1. A suit may be instituted and defended by the managing *gomashteh* of a banking house, under the general power vested in him, without producing any authority from his principals for so doing. No. 75, 31st January 1811, ... I. 17

2. A *surberakar*, or manager under the Court of Wards, may institute and defend suits affecting the estate of a minor or disqualified landholder, under the instructions of the Court of Wards, but he cannot claim, as a right, the services of the Government pleader. No. 335, 2d February 1821, ... I. 137

3. In like manner an executor, or the guardian of a minor not under the Court of Wards, may institute and defend suits affecting the minor's estate. No. 335, 2d February 1821, ... I. 137

4. If a person becoming security for a bond, affix his name to the deed in recognition of his responsibility, he is liable to be sued as a party jointly with the principal, without the necessity of a security bond on a separate stamp. No. 341, 1st June 1821, I. 139

5. A zumeendar may institute and maintain one and the same suit for the recovery of the revenue of land, held exempt from the payment of revenue, which may have been alienated under two or more grants prior to the 1st December 1790. No. 346, 3d August 1821, ... I. 142

6. In reply to a letter requesting to be informed whether a suit might be instituted under Regulation VII. 1812, in favor of the Nawab Nazim, the Governor General's agent at Moorshedabad was informed, that the solution of the question depended on whether Government considered his highness in the light of a sovereign prince or not, and the Court suggested that he should apply direct to Government for information on that point. No. 377, 8th April 1825, ... I. 156

7. An action will not lie against a register for acts done in his official capacity under the rules contained in Regulation VIII. 1819, for the sale of putnee talooks. No 440, 8th December 1826, I. 185

8. Suits brought by or against an European British subject in his capacity of manager of the estate of a native, not being personal to the manager himself, should be regarded as suits instituted on the part of or against a native, and ought to be tried, like other suits in which natives are parties, by the court in which, from its amount, it may be cognizable. [*By Acts XI.* 1836, *and VI.* 1843, *European British subjects are made amenable to all the country courts.*] No. 848, C. C. 13th December, W. C. 18th October, Government 2d December 1833, II. 143
No. 967, C. C. 17th July 1835, ... II. 221

9. A, having sold a house at Mynpooree to B, locked it up, and went to a foreign country, leaving property in a room, the key of which he left with C. Some time after his departure, B, concluding that he was either dead or would not return, took the key from C and gave it to the cotwal, who opened the door, took an inventory of the property, and sent it to the magistrate, and B instituted a suit to recover the amount of his debt from the property. The judge, doubting whether he could entertain the suit against the property when no defendant was forthcoming, referred the question to the Sudder Dewanny Adawlut, who held that as the cause of action arose within the court's jurisdiction, and property was forthcoming, the case was cognizable, and should be proceeded on in the manner laid down in Sections 2 and 3, Regulation II. 1806. No. 854, W. C. 10th January, C. C. 31st January 1834, ... II. 147

10. Magistrates and other judicial functionaries who were not liable to civil actions in the country courts, for damages on account of alleged injuries committed in their official capacity before the passing of Act XI. 1836, have not been rendered so liable by that Act, No. 1051, C. C. to Government, 16th

September, Government reply, 10th October 1836, ... II. 288

11. The collector having been erroneously made a party in a suit for an act done by him under an order of the court, the judge should give the plaintiff the option, before nonsuiting him, of withdrawing the collector's name among the defendants by a supplementary plaint, and then proceed to dispose of the case, or refer it to the court by which it may be cognizable. No. 1075, C. C. 21st February, W. C. 13th January 1837, ... II. 298

12. A suit cannot be proceeded with against a defendant who has left the country, and upon whom notice of action cannot be served. No. 1343, C. C. 20th May, W. C. 17th June 1842, ... III. 92

13. Residents of foreign territories, instituting or defending suits in the Company's courts, must find security for costs, although they hold land, or other property, within the limits of the British territories. No. 1355, W. C. 5th August, C. C. 26th August 1842, ... III. 96

III. Original Suits in what District to be instituted.

1. A suit for the recovery of rent collected by the surberakar of a mocureree mehal in *Nuddea*, should be brought and tried in that district, and not in *Rajeshye*, where the defendant resided, as any local enquiry that might appear necessary could be made with greater facility and propriety under the court presiding over the jurisdiction in which the lands were included. No. 73, 4th January 1811, I. 17

2. A debt having been contracted in *Nagpoor*, where the defendant continues to reside, the subsequent execution of a bond at Allahabad, does not authorise the judge to take cognizance of the suit; as that instrument cannot be considered to be the cause of action, but merely evidence of the debt which is the cause of action. No. 351, 24th January 1823, I. 145

3. Certain suits declared cognizable by the judge of Suharunpore, because the defendants were residents of that district. No. 439, 24th November 1826, ... I. 184

4. A decree, having been passed against a military officer prior to the date on which Regulation XX. 1825, which has reference to the Act of Parliament passed in the 4th year of Geo. IV., was promulgated, was held by the Court, to all intents and purposes as good and valid, as if the Regulation of a posterior date, and the Act of Parliament which it promulgated, had never been passed. No. 443, 23d February 1827, ... I. 187

5. A moonsiff cannot take cognizance of a suit for money or personal property in which the defendant is not resident within his jurisdiction. No. 452, 15th June 1827, ... I. 191

6. A suit is cognizable against A, B, and C, in the sillah court in which the cause of action arose, though C is a resident of Calcutta, having no agent in the district. No. 721, C. C. 5th October, W. C. 9th November 1832, ... II. 58

7. In a suit for arrears of rent of an estate in zillah Tipperah, against defendants residing in zillah Hooghly, who had no property in zillah Tipperah, held that the suit being for a sum of money and the defendants all residing in Hooghly, the judge of that district was competent to take cognizance of it. No. 739, C. C. 23d November 1832, ... II. 68

8. A suit to recover a debt must be instituted in the court of the district in which the cause of action arose, or the defendant resided as a fixed inhabitant at the time of the commencement of the suit. The mere circumstance of the defendants being an occasional visitor, or having available property in the district, does not subject him to the jurisdiction of the zillah court. No. 797, W. C. 14th June, C. C. 5th July 1833, ... II. 105

9. The magistrate of Balasore having summarily decided that certain lands lay within one of the tributary estates, the zumeendar of an estate, subject to the regulations, wished to sue for the recovery of possession before the superintendent of the tributary mehals; the court held that the suit should be admitted, as the magistrate's assumption must be maintained until the contrary be shewn by a more formal enquiry after the admission of the suit. No. 864, C. C. 14th February 1834, ... II. 155

10. A, a resident of *Mynpooree*, makes advances of cash to B of *Cawnpoor*, taking a bond and agreement to deliver a certain quantity of indigo produce at C, another factory of A's in *Furruckabad*, the bond being written and the advance made at A's permanent residence. Held that A may sue B for breach of contract, either in *Mynpooree* where the cause of action arose, or in *Cawnpoor* where B resided at the time of instituting the suit. The failure of delivery in *Furruckabad* is not a circumstance, which, under the regulations, would give jurisdiction to the court of that district. No. 866, W. C. 14th February, C. C. 28th February 1834, ... II. 157

11. In a suit for the balance of rent of a farm in the *Rungpoor* district, the plaintiff and defendant being both residents of *Moorshedabad*, the court were of opinion that the suit should be tried at *Rungpoor*. No. 871, C. C. 21st February, W. C. 21st March 1834, ... II. 161

12. When in a suit for rent, the farm or other fixed property is in one district, the landlord resident in another, and tenant in a third; the suit would be triable either in the district in which the money was paid, or in that in which the defendant resided when the suit was instituted. No. 871, C. C. 21st February, W. C. 21st March 1834, ... II. 161

13. The parties in a suit are residents of the village of *Dhukrace*, of which the revenue jurisdiction belongs to *Furruckabad*, and the police and civil jurisdiction to *Mynpooree*. The plaintiff, wishing to sue to set aside the summary award of the collector of

Furruckabad for rent, would sue before the moonsiff of *Chibramow* in Furruckabad. Held that the plaintiff must sue in the court of the moonsiff of the *Mynpooree* district, in whose jurisdiction the village of *Dhukraee* is situated, for the *Furruckabad* authorities, having no jurisdiction in the village of *Dhukraee*, cannot take cognizance of the plaintiff's claim. No. 915, W. C. 21st November, C. C. 5th December 1834, ... II. 191

14. The defendant is not a resident within the moonsiff's jurisdiction, but has real property there; this would render him amenable to the moonsiff's court in cases connected with that property, but not in a suit in which both he and the plaintiff are inhabitants of a foreign territory, the cause of action having also arisen in a foreign territory. No. 956, W. C. 12th June, C. C. 10th July 1835,..... II. 215

15. In a suit for 63 villages of which 61 were situate in Beerbhoom and 2 in Moorshedabad, it was deemed proper that the suit should be tried in the former district, where the greater part of the property lay. No. 969, C. C. 31st July 1835, ... II. 222

16. A suit for the possession of property within the jurisdiction of the civil court of the 24-Pergunnahs, beyond the limits of the town of Calcutta, against a resident of Calcutta, is cognizable by the zillah court of the 24-Pergunnahs. No. 991, C. C. 11th December 1835, W. C. 8th January 1836, II. 238

IV. Original Suits in what Courts cognizable.

See "Military Cantonments, Courts, &c., Civil," Nos. 2, 3, 4.

See "Moonsiffs, II." *passim.*

See "Principal Sudder Ameens," Nos. 4, 9, 13, 16, 17.

See "Sudder Ameens," Nos. 15, 17.

V. Amount of action in Original Suits.

1. A claim for land and mesne profits, the produce of the land and the mesne profits being each less than 5,000 rupees, but in the aggregate exceeding that sum, is cognizable in the first instance by the provincial court. No. 69, 30th August 1810, ... I. 16

2. In a suit by a collector for the forfeiture of an estate for resistance or evasion of process, the amount of action must be calculated on the annual jumma, and not on the amount of the arrears due. No. 386, 27th May 1825, ... I. 159

3. In a suit by a person claiming to succeed to one of the tributary mehals of Cuttack, it was determined that the value of the property should be assumed at the *peshcush*, which may be held to be the amount of the annual jumma payable to Government. No 462, 7th September 1827,..... I. 196

4 In a suit instituted by a collector against a farmer and his sureties under Sections 26 and 28, Regulation XXVII. 1803, the amount of action must be regulated by the *jumma* of the estate from which the arrear is due; and not by the amount of the fine to be levied, which is left to the discretion of the court to fix. No. 808, W. C. 2d August, C. C. 30th August 1833, ... II. 114

5. A suit instituted in the zillah court or before a moonsiff by a ryot, to obtain a reversal of the summary decision of the collector adjudging a balance against him and ejecting him as a defaulter, must be laid at the amount in dispute, or the sum sued for in the first instance. No. 862, W. C. 7th February, C. C. 28th February 1834, ... II. 156

6. Suits founded on the right of inheritance should include the whole claim arising out of the same cause of action. No. 1040, C. and W. C. 5th August 1836, ... II. 277

7. A person instituting a suit to obtain the sale of certain lands in execution of his decree, should lay his suit at the estimated selling price, [or the amount of the plaintiff's claim under the decree, supposing the selling price to have been in excess of that claim,] according to the 4th Clause of the note on Article 8, Schedule B, Regulation X. 1829, the suit being viewed as one, not for possession of, but rather for an interest in malgoozaree land, not capable of valuation under the 1st Clause of the note. No. 1301, W. C. 25th June, C. C. 16th July 1841,..... III. 81

See "Stamps III." Nos. 5, 6, 10, 11, 15, 18, 19, 20, 22, 27, 28.

VI. Limitation of action in Original Suits.

1. The limitation in Section 6, Regulation XIV. 1805, in regard to hearing of suits in which the persons specified are parties, is not applicable to cases in which the cause of action arose subsequently to the conquest of Cuttack, i. e. 14th October 1803. No. 122, 17th March 1813,..... I. 35

2. In a suit cognizable by a moonsiff, the origin of the cause of action must be reckoned from the time when the money became payable, not from the date of the bond. A simple acknowledgment of the truth of the demand will not be sufficient to constitute a new cause of action, so as to bring within the cognizance of the moonsiff a suit, the prescribed period for instituting which had elapsed. No. 196, 1st March 1815, ... I. 61

3. Notwithstanding the mention of 60 years in Regulation II. 1805, no claim can be heard which had its origin prior to the cession of the province; and this without any reference to the mode in which possession may have been, or alleged to have been obtained: consequently the rule in Clause 3, Section 18, Regulation II. 1803, remains in full force. No. 432, 26th September 1826, ... I. 181

No. 478, 18th April 1828, ... I. 203

4. In a suit instituted to obtain execution of a moonsiff's decree under the old system, the cause of action must be held to have arisen on the expiration

of one year from the date of the decree. A suit instituted 14 years after the date of the decree would be inadmissible, unless satisfactory cause be shewn for the delay. No. 495, 27th February 1829, ... I. 211

5. A *miscellaneous application* to a civil court within 12 years cannot be considered as the "preferring a claim" within the meaning of Section 14, Regulation III. 1793, so as to enable the party to bring his action *after* the expiration of that period. No. 813, C. C. 16th August, W. C. 6th September 1833, ... II. 117

6. The limitation prescribed in Regulation II. 1805, applies to the claim for a share of an ancestral undivided estate, still held by a descendant of the family, in which estate the plaintiff had no manner of possession, either as a sharer of a specific portion, or as receiving a maintenance therefrom, during the period of 12 years antecedent to the institution of the suit, no good cause [minority or the like] being shewn to excuse the delay. No. 942, W. C. 7th November 1834, 2d January and 3d April 1835, C. C. 28th November 1834, 20th February and 1st May 1835, ... II. 206

7. According to the spirit of Clause 10, Section 35, Regulation XXII. 1795, a person who has agreed to receive a maintenance, or, as the Regulation expresses it, an allowance either in money or land, from the principal *putteedar* in consideration of his right, has no claim to a personal possession or management of any portion of the estate. No 942, W. C. 7th November, 1834, 2d January and 3d April 1835, C. C. 28th November 1834, 20th February and 1st May 1835, ... II. 206

8. The provisions of Clause 4, Section 3, Regulation II. 1805, [which declares that no length of time shall be held to bar the cognizance of suits for the recovery of property in case of mortgage or deposit,] must be considered applicable as well to suits on deposits of money or other personal property as to those for lands. No. 965, W. C. 17th July, C. C. 7th August 1835, ... II. 220

9. The claims of *putteedars* to possession of their respective shares of an estate, of which one *putteedar* has obtained possession, must be preferred within 12 years from the date on which the proprietor's right was adjudged by the decree of court to the *zumeendar*, or one or more of the co-parceners, in default of which they fall under the operation of the general limitations No. 980, W. C. 18th September, C. C. 23d October 1835,..... ..... II. 229

10. The period of one year from the date of the delivery of the collector's decision, to which the institution of a suit to set aside that decision is restricted by Section 6, Regulation VIII. 1831, must be calculated according to the rules laid down in Clauses 10 and 11, Section 8, Regulation XXVI. 1814. No. 1028, C. C. 29th July, W. C. 19th August 1836, ... II. 268

10. The petitioner's estate was sold in 1803: objecting to the sale and not obtaining redress from the revenue authorities, he presented a petition to the provincial court in 1807, and was directed to apply to the Revenue Board. Ten years after, in 1817, he did apply to the Revenue Board, who, on the 17th February 1818, referred him to the civil court. On the 5th December 1829, [after a lapse of 11 years and nearly 10 months,] he instituted his suit in the zillah court of Behar. Held that the cognizance of the suit is barred under the general rule of limitations. No. 1036, C. C 12th August, W. C. 9th September 1836, ... II. 274

11. Regular suits to contest the summary awards of judicial authorities for rent, passed prior to the enactment of Regulation VIII. 1831, must be instituted within one year of the promulgation of that regulation. No. 1303, C. C. 16th July, W. C. 6th August 1841, ... III. 81

OUSTING OF FARMERS.

See "Zumeendars," No. 2.

PARDON.

See "Accomplices," *passim*.

PARENTAGE.

1. A person born at Chandernagore of European parents must be considered an European; the place of his birth being immaterial. No 397, 29th July 1825, ... I. 166

PAUPERS.

1. The subsistence money of pauper plaintiffs confined for litigiousness must be paid by Government. No. 9, 13th September 1805, ... I. 3

2. Women of rank, who are exempted from personal appearance in court, are not proper objects of the discretionary rule in Section 3, Regulation XLVI. 1793, and Section 2, Regulation III. 1802, which authorises the confinement of litigious paupers. No. 11, 26th September 1805 ..... I. 4

3. The order for the confinement of litigious paupers is to be carried into effect, notwithstanding an appeal, and a further imprisonment may be ordered in the event of litigious appeal. No. 12, 18th October 1805, ... I. 4

4. The responsibility of *hazirzamins* of paupers and their property, ceases on their death; but in the event of their absconding, notice to cause attendance of parties for whose appearance they are sureties, should be proclaimed at their houses, and in public *cutcherry*; after which, on failure to produce the parties, the fees and costs demandable may be recovered from their property. No. 34, 13th February 1808, ... I. 9

5. A pauper plaintiff, whose suit has been dismissed with costs, is liable to confinement at the instance of

the defendant, and on the deposit of the prescribed subsistence money, if he fail to pay the amount adjudged against him by the decree, in like manner with any other suitors; and of course, in common with other insolvent debtors, equally entitled to the benefit of the rules introduced in Section 11, Regulation II. 1806. No. 110, 3d September 1812, I. 30

6. When a plaintiff has paid the institution fee, and given security for the pleader's fee, he cannot be allowed to prosecute a suit in *formâ pauperis;* but in the event of an appeal from the decision, there would be no objection to his being admitted as a pauper in the appeal, on proving his poverty. No. 186, 31st August 1814, ... I. 57

7. When a pauper appoints a *vakeel*, the *vakalutnameh* must be written on stampt paper; but no *vakalutnameh* is necessary, if the pleader is appointed by the court. No. 261, 26th December 1816, I. 91

8. The suit of a pauper plaintiff being dismissed with costs, and the proceeds of the sale of his property being insufficient to pay the fees due to his pleader, with the costs and fees awarded to the opposite party, and the law expences due to Government; the judge, after payment of the vakeel's fees, should exercise his discretion in satisfying the other demands, in such manner as may appear equitable, leaving the party dissatisfied to appeal. [*See Construction* 1258, *No.* 297]. No. 621, 21st January 1831, ... II. 3

9. The vakeel of a pauper plaintiff, whose suit was dismissed, is not entitled to any portion of the fee deposited by the defendant for his vakeel. No. 740, 7th December 1832, ... II. 69

10. Security for appearance cannot be demanded from the agent of a female pauper plaintiff, nor can such agent be committed to jail on the suit preferred, through his agency, proving unfounded, vexatious, or wilfully exaggerated. No. 777, C. C. 6th April, W. C. 3d May 1833, ... II. 92

11. On an application to sue *in formâ pauperis*, the judge should restrict his enquiry to the ability or otherwise of the applicant to pay the fees required; leaving the objections of the defendant to the plaintiff's statement of the cause of action to be offered in the *answer* to the plaint, as contemplated by Section 5, Regulation XIII. 1808. [*By Act IX.* 1839, *the judge is empowered to determine, whether there is probable cause for instituting the suit, before admitting the application.*] No. 821, C. C. 30th August, W. C. 20th September 1833, II. 122

12. A plaintiff who had been allowed to sue as a pauper, becoming subsequently, pending the suit, possessed of sufficient property to nullify his plea of poverty, should be called upon to pay up the original stamp duty in lieu of institution fee, &c. under penalty, in the event of neglecting to do so, of being nonsuited. No. 964, C. C. 3d October, W. C. 7th November 1834, ... II. 184

13. Suits for the recovery of damages, said to have been sustained from not having been allowed to cultivate his lands as a *khoodkasht ryot*; or for the loss the plaintiff may have sustained from his lands having been kept out of cultivation by the opposition of the defendant having prevented him from receiving his customary share of water to irrigate his fields? may be received and tried *in formâ pauperis*; such damages not being considered of a personal nature. No. 919, W. C. 5th December, C. C. 26th December 1834, ... II. 193

14. The sureties or *hazirzamins* of paupers are liable, in the event of the principals not appearing, only to the penalty of imprisonment for six months; the costs due by the principal cannot be levied from the goods of the surety. No. 922, W. C. 19th December 1834, C. C. 26th January 1835, ... II. 195

15. No stamp duty is leviable in pauper cases, instituted in the judge's court, and afterwards referred for decision to a moonsiff. No. 945, W. C. 24th April, C. C. 29th May 1835, ... II. 208

16. A principal sudder ameen cannot receive an answer to a plaint from a defendant *in formâ pauperis*, without the sanction of the judge, it being a principle that the judge alone can determine the question of pauperism. [But see C. O. of the 11th April 1843.] No. 949, C. C. 1st May, W. C. 5th June 1835, ... II. 210

17. A person adjudged to be the *slave* of another is entitled to appeal against the decision *in formâ pauperis*; "*slavery*" not coming under the head of "*personal injuries*." [*Since the enactment of Act V.* 1843, *no suit for slavery can be brought into court.*] No. 1009, C. C. 20th May, W. C. 10th June 1836, ... II. 256

18. Persons wishing to appeal *in formâ pauperis* to the King in Council must furnish the same security as other appellants: i. e. 5,000 rupees, to cover the original costs of appeal; and 5,000 rupees to reimburse the Hon'ble the Court of Directors for expenses incurred in carrying on the appeal under 3 and 4 Will. IV. Cap. 41, Section 22. [*The total amount of security now required is* 25000 *Rs.*] No. 1033, C. and W. C. 12th August 1836, ... II. 272

19. *Hazirzaminee* bonds of paupers must be written on stampt paper. No. 1063, W. and C. C. 23d December 1836, ... II. 290

20. An order of the Sudder Dewanny Adawlut, refusing to admit an appeal *in formâ pauperis*, is not appealable to the King in Council. No. 1097, W. C. 8th July, C. C. 4th August 1837, ... II. 313

21. Applications from pauper appellants to stay execution of the decree pending appeal, as well as the *vukalutnameh* and *hazirzaminee* bonds in pauper cases, must be written on stampt paper. No. 1132, W. C. 16th February, C. C. 9th March 1838, III. 5

22. A pauper decree holder should be put in possession of the property decreed to him by an officer of Government; the cost being chargeable to the opposite party. No. 1186, C. C. 16th November, W. C. 2d November 1838, ... III. 34

23. The rules contained in Sections 12 and 13, Regulation XXVIII. 1814, are applicable to any pauper appellant, whether he was a pauper in the original suit or not. If however the appellant appeared originally as a pauper, he would of course be at liberty to file a copy of the decree of the lower court on plain paper, being entitled to such copy under Section 8 of the Regulation. No. 1207, C. C. 1st April, W. C. 26th April 1839, ... III.

24. The petition of a person who was a pauper in the original suit having been rejected under Clause 3, Section 12, Regulation XXVIII. 1814, he is entitled to present with his petition, written on the full stamp, the copy of the decree granted to him on plain paper: he need not take out a copy on the requisite stamp. No. 1217, W. C. 17th May, C. C. 21st June 1839, ... III.

25. The provisions of Act IX. 1839 are considered applicable to petitions to sue *in formâ pauperis* which remained undisposed of on the date on which the Act came in force. No. 1229, W. C. 5th July, C. C. 2d August 1839, ... III.

26. When a zillah judge has rejected an application to sue *in formâ pauperis*, he cannot, of his own authority, admit a second application from the same party on the same matter: he must consider the second as a petition of review of his own order and act accordingly. No. 1229, W. C. 5th July, C. C. 2d August 1839, ... III.

27. The provisions of Act IX. 1839 have equal reference to a respondent in an appeal, as to a defendant in an original suit. No. 1250, C. C. 13th September 1839, Government 16th January 1840, III.

28. On the application of the guardian of a deaf and dumb person to appeal *in formâ pauperis* on behalf of his ward through an authorized agent, it was held that such application could not be received from any one, not being a female of rank of the description stated in Clause 1, Section 5, Regulation XXVIII. 1814. [*By Act XIX.* 1840, *the courts may at their discretion receive applications to appeal in formâ pauperis, from other persons than females of rank.*] No. 1254, C. C. 4th October, W. C. 8th November, 1839, ... III.

29. In a pauper suit after the payment of vakeel's fees, the dues of Government for stamp duty have the next claim: after which the principle of Constructions 621 is applicable to other costs incurred by Government, and other parties. No. 1258, C. C. 1st November, W. C. 6th December 1839, ... III.

30. A zillah judge has no authority to delegate to another the duty of making the enquiry contemplated by Section 1, Act IX. 1839, in case of parties applying to sue *in formâ pauperis*, i. e whether there is probable cause for instituting the suit. No. 1285, W. C. 7th August, C. C. 7th September 1840, ... III.

31. The provisions of Clause 6, Section 2, Regulation XII. 1833, which declare that engagements between vakeels and their clients for their fees shall only be enforced by a regular suit, held to be applicable to pauper suits. No. 1297, C. C. 28th May, W. C. 18th June 1841, ... III. 79

32. The provisions of Clause 5, Section 2, Regulation XII. 1833, by which parties are allowed to settle with their pleaders for their fees, are applicable to pauper as well as other cases. No. 1309, W. C. 15th September, C. C. 22d October 1841, ... III. 82

33. If a plaintiff who has instituted his suit on stampt paper, plead pauperism when required to file a supplementary plaint to amend his original plaint, his pauperism should be enquired into, and, if established, his prayer should be granted. No. 1313, W. C. 3d December, C. C. 31st December 1841, ... III. 83

34. A decision passed in favor of a pauper plaintiff by the lower court cannot be appealed against by the defendant [not a pauper] on plain paper: but the appealing defendant may be allowed a copy of the lower court's decree on plain paper for presentation with his petition of appeal. No. 1314, C. C. 10th December 1841, W. C. 10th January 1842, III. 84

35. An appeal lies to the Courts of Sudder Dewanny Adawlut from the order of a zillah or city judge, passed under Section 1, Act IX. 1839, rejecting an application to sue *in formâ pauperis*. No. 1336, C. C 22d July, W. C. 19th August 1842, ... III. 96

PAY OF A MILITARY OFFICER OR SEPOY.

See "Military Cantonments, Courts, &c. Civil," Nos. 5 and 6.

PENALTY.

I. For breach of Opium Laws.

See "Opium," No. 1.

II. For breach of Salt Laws.

See "Salt," *passim.*

III. For non-delivery of articles of Company's Investment.

See "Company's Investment," No. 2.

IV. On arrears of Rent.

See "Jureemana," No. 1.

V. On undue exaction of Rent.

1. The penalty prescribed for undue exaction of rent is exclusive of the refund of the sums proved to have been illegally levied. No. 126, 22d April 1813, I. 36*

PENSIONS.

1. Claims upon Government for pensions are cognisable only by collectors, under Regulations XXIV. 1793, XXXIV. 1795, and XXIV. 1803, (subject to an appeal to the Board of Commissioners and the Governor General in Council,) and not by the civil court. No. 230, 12th January 1816,..... I. 76

2. Claims to pensions even when granted in commutation or indemnification of land, which have not been recognised and confirmed by the revenue authorities, or by Government, are not cognisable by the civil courts; and as Government cannot be sued, the collector cannot be liable to an action for declining to pay an unauthorised pension. No, 343, 6th July 1821,..... I. 140

3. Pensions granted by Government are not liable to attachment in execution of decrees. No. 788, 3d May 1833, ... I. 99

4. Pensions payable from the Benares treasury under the provisions of Section 2, Regulation XXXIV. 1795, are not transferable by sale, gift, or otherwise, for a longer period than the lives of the original grantees; and, on failure of the heirs of the original grantees, they must be considered to escheat to Government as lapsed or expired grants. No. 988, W. C. 20th November, C. C. 18th December 1835,..... II. 236

PEONS.

1. The *sudder ameens* to be guided, in regard to *tuhubana*, by the rules in force for the guidance of the zillah and city judges previous to the enactment of Regulation V. 1831 No. 668, 13th January 1832,..... II. 31

2. The native judges are to nominate the *muzhoore peons*, to be employed to serve their processes; and the zillah judge will select from those nominated such as he may think fittest for the duty. No. 762, W. C. 22d February, C. C. 15th March 1833, ... II. 85

3. The peons attached to the *courts* of the moonsiffs under Section 5, Regulation VII 1832, are intended exclusively for the execution of judicial processes, and should not be employed in the distraint and sale of property for arrears of rent. [*Act I of 1839 cancelled the power of moonsiffs to act as agents for the sale of property attached for arrears of rent.*] No. 861, W. C. 7th February, C. C. 28th February 1834, ... II. 155

4. A zillah judge is not competent to interfere in regard to the payment of the *tuhubana* of the nazir's peons. No. 1084, C. and W. C 31st March 1837, ... II. 305

5. The case of a *peon* on the establishment of a Government functionary making away with money entrusted to, or collected by him, does not come within the meaning of Regulation II. 1813; such offence is considered to be a misdemeanor, and punishable as such under the general regulations. No. 1200, C. C. 18th January, W. C. 1st February 1839, ... III. 44

6. In a suit, cognisable by a moonsiff, referred to a principal sudder ameen under Section 5, Act XXV. 1837, that officer is not tied down by the restrictions imposed on moonsiffs regarding *tuhubana* for the service of process. No. 1862, W. C. 26th August, C. C. 9th September 1842, ... III. 98

PERIOD FOR APPEALING.

See "Limitation of Appeal in Civil Suits," "Limitation of Appeal in Criminal Courts."

PERJURY.

1. Construction 52 has been superseded by the rules of Regulation XVII. 1817. No. 52, 4th November 1809, ... I. 12

2. Native commissioners cannot commit for perjury but must refer the matter to the judge, *but a register may.* [*The latter part is superseded by Construction* 285.] No. 87, 12th April 1811, I. 20

3. A false deposition, on oath, or solemn declaration, containing a deliberate and specific criminal charge, which the deponent knows to be unfounded, and which appears also to be malicious, is within the provisions of perjury, contained in Regulation II. 1807; notwithstanding the provision for malicious, vexatious, and unfounded charges in Section 5, Regulation VII. 1811 No. 233, 29th January 1816, I. 77

4. When perjury is committed before a register, he should transmit his proceedings to the judge, who, if he be of opinion that there are sufficient grounds for bringing the accused to trial, will commit the case, and the magistrate will include it in his calendar as if the commitment had been made by himself. No. 285, 4th February 1818, ... I. 107

5. A judge is not competent to commit a person for trial on the charge of giving money to witnesses in a civil suit, for the purpose of influencing their evidence. No. 504, 25th April 1829, ... I. 215

6. There is no regulation which exempts females convicted of perjury from *tukeer*. No 506, 8th May 1829, ... I. 215

7. The registry of deeds being a "civil proceeding," within the meaning of Clause 2, Section 14, Regulation XVII. 1817, in case of perjury committed before the register of deeds, the judge and register should proceed according to that clause, and not make over the matter to the magistrate. No. 611, 25th November 1831, ... I. 253

8. A deposition taken on oath in the private dwelling of a sudder ameen is illegal, and a charge of perjury cannot be sustained on such a deposition. No. 627, 28th February 1831, ... II. 6

9. Constructions 638 and 656 contain the Court's opinion on the subject of perjury and the measure of

evidence required to prove the crime, with a futwa of their law officer on the subject. No. 638, 27th May 1831, ... II. 10

No. 656, 2d September 1831, ... II. 18

10. While a case under Regulation XV. 1824, was pending before the magistrate, it was competent to him to make a commitment for forgery or uttering forged deeds; but not after he had referred the investigation of that point to the civil court. As the sudder ameen, who decided the civil case, did not take any notice of the alleged forgery, and the case was pending in appeal before the judge, the magistrate was directed to instruct the parties to apply to the judge for permission to prosecute for forgery in the criminal court, the deed bearing palpable marks of forgery. No. 820, 23d August 1833, ... II. 122

11. The wilful concealment of bond debts due to an insolvent debtor, examined on oath under the rules contained in Section 11, Regulation II 1806, is punishable on conviction as wilful perjury under Clause 1, Section 13, Regulation XVII. 1817. No. 1086, C. C. 14th April, W. C. 28th April 1837, ... II. 306

12. As Section 22, Regulation XII. 1817, does not invest revenue officers with power to examine parties on oath in regard to pensions referred to in Regulation XXIV. 1803, it was held that a prosecution for perjury could not be maintained against a party charged with having in such a case falsely deposed on an oath administered by a collector. Had the act of perjury been committed in the course of an investigation into the conduct of a native officer authorised to pay pensions, Clause 5, Section 16, Regulation VIII. 1809 would apply. No. 1106, W. C. 8th September, C. C. 6th October 1837, ... II. 322

13. Wilful and designed prevarication in a witness, though not amounting to perjury, is punishable as a contempt of court. [*This Construction is rescinded by the W. C. on 14th December 1842, C. C. 27th January 1843.*] No. 1177, C. C. 5th October, W. C. 14th September 1838, ... III. 30

PERSONAL DAMAGES.

See "Damages," Nos. 2, 5, 6.
"Mocuuffs, II." Nos. 5, 15, 19.
"Paupers," No. 13.

PETITIONS, MISCELLANEOUS.

See "Stamps, VI."

PETITIONS OF PLAINT AND APPEAL.

See "Stamps, III." *passim*.

PETTY OFFENCES

See "Reference of Criminal Cases to Law Officer and Sudder Ameen," *passim*.

PLAINT.

See "Stamps, III." *passim*.

PLEADERS IN CIVIL COURTS.

1. It is not necessary to impose on a pleader the full fine for non-attendance, if a less fine appear adequate. No 18, 8th February 1806, ... I. 6

2. The fee of a second pleader appointed by parties is to be levied in common with other fees of pleaders. No. 38, 22d June 1808, ... I. 9

3. A *mokhtar* duly constituted, may appoint a pleader, and execute a *vakalutnamah*, authorizing him to conduct the suit. No. 92, 19th September 1811, ... I. 23

No. 417, 28th April 1826, ... I. 175

4. The pleaders of a civil court may be called upon to attest confessions before the magistrates, and are liable to dismissal for refusing to do so. No. 101, 23d April 1812, ... I. 26

5. The levying of pleaders' fees cannot be stayed by an appeal from the decision. No. 110, 3d September 1812, ... I. 29

6. *Vakeels* are liable to no charge on their fees, beyond the value of the stamp on which the receipt for the same is to be written. No. 156, 21st April, 1814, ... I. 48

7. If a plaintiff, instead of preferring his complaint in person, employ a vakeel to prefer it, he must deposit the full fee. [*Under Regulation XII 1833, it is now optional with the plaintiff to deposit his pleader's fee or not.*] If the suit be referred to register or *sudder ameen*, the full fee will be kept in deposit for the *vakeel* who may conduct the suit in those courts; and should he not be the same who filed the plaint, the court may award the latter a fee of 4 annas, or such fee as may appear adequate, not exceeding ¼ of the full fee, though in general a fee of 4 annas is sufficient. No. 197, 1st March 1815, ... I. 61

8. If a suit be decided in favor of the plaintiff, on the acknowledgment of the defendant without an investigation of the merits, the *vakeels* will be entitled to the full fee: but if it be dismissed on *razeenamah*, no formal judgment being passed, the *vakeels* will be entitled to ½ or ¼ the full fee, according as the *razeenamah* may have been filed before or after the filing of the pleadings. No 209, 1st June 1815, I. 67

9. When a pauper appoints a *vakeel*, the *vakalutnamah* must be written on stampt paper. But no *vakalutnamah* is necessary if the pleader is appointed by the court. No. 261, 26th December 1816, I. 91

10. By Construction 300 it was ruled on the 29th January 1817, that under Section 32, Regulation XXVII. 1814, vakeels employed in summary suits for rent, were *entitled* to ½ of the fee which they would have received, had the suit been regular. But on the 11th December 1818, it was held by Con-

struction 297, that as that Section had been rescinded by Section 9, Regulation XIX. 1817, which makes the rule contained in Clause 11, Section 2, Regulation XXVI. 1814, applicable to such summary suits as well as to summary appeals from dismissals on default, the court is at liberty to reduce the fee to such sum as may appear reasonable. No. 297, 11th December 1818, ... I. 118
No. 300, 29th January 1817, ... I. 120

11. A *surberakar* acting under the Court of Wards, cannot claim, as a matter of right, the service of the Government pleader in a case in which the interests of Government are not concerned. No. 335, 2d February 1821, ... I. 137

12. In cases adjudged by *razeenameh*, after the evidence has been completed, the *vakeels* are entitled to the full fee. No. 418, 5th May 1826, ... I. 175

13. The order of Government, or of a Government officer, to the Government pleader, to plead in a suit in which Government is a party, may be accepted as his *vakalutnameh*, though written on unstampt paper. No 420, 26th May 1826, ... I. 176

14. When a vakeel is employed by two defendants under separate *vakalutnamehs*, he is entitled to receive from each the full fee, and the whole amount of fees due is chargeable to the plaintiff on the dismissal of the suit. No. 500, 3d August 1829, ... I. 213

15. The pleaders of the Sudder Dewanny Adawlut may present petitions to the Nizamut Adawlut. No. 563, 18th June 1830, ... I. 236

16. The zillah judge may make such allotment and distribution of the pleaders attached to the courts of the sudder ameens as may appear proper, and his orders are not open to appeal to the provincial court. No. 593, 6th May 1831, ... I. 247

17. The *vakeels* of one court not being allowed to plead in another, the commissioner of Cuttack was held justified in preventing the *vakeels* of the zillah court of Cuttack, from acting as *mokhtars* in his court. No. 602, 14th October 1831, ... I. 250

18. The provisions of Section 7, Regulation IX. 1831, [which authorize pleaders to settle with their clients for the amount of their fees in summary cases, and all others in which the regulations do not require a deposit of the fee,] have reference to the zillah and city courts, as well as to the Courts of Sudder Dewanny Adawlut. [*Regulation XII. 1833, authorizes the parties in regular suits to settle with their pleaders without making any deposit.*] No. 711, W. C. 24th August, C. C. 21st September 1832, ... II.

19. The vak
was dismissed, is
deposited by the defendant for her vakeel. No. 740, C. C. 7th December 1832, ... II. 69

20. The payment of vakeels' fees cannot be stayed on the ground that an appeal has been instituted from the decision, even though the defendant should be confined on failure to pay the fees due on account of a decree given against him in favor of a pauper. No. 776, W. C. 4th April, C. C. 3d May 1833, II. 91

21. The *vakeels* of the courts of sudder ameens and principal sudder ameens are equally entitled with those of the zillah and city courts to demand fees for furnishing legal opinions on points of law, in particular cases which may be referred to them by the parties interested. No. 802, W. C. 5th July, C. C. 2d August 1833, ... II. 109

22. No appeal lies to the Sudder Dewanny Adawlut from the order of a zillah or city judge, dismissing the vakeel of a moonsiff's court. No. 846, C. C. 6th December, W. C. 27th December 1833, ... II. 142

23. A *vakalutnameh* executed on the original institution of the suit, unless cancelled by the party or otherwise set aside, must be considered as operative and in full force, until the final judgment shall have been enforced. No. 852, W. C. 27th December 1833, C. C. 17th January 1834, ... II. 145

24. There is no regulation that prohibits the courts from deputing *vakeels* to make local enquiries; but the Sudder Dewanny Adawlut consider the measure as of doubtful expediency in general. No. 901, W. C. 26th September, C. C. 24th October 1834, ... II. 183

25. The zillah and city judges should exercise no interference in regard to the remuneration by their clients of the vakeels of the moonsiffs' courts. No. 990, C. C. 11th December 1835, W. C. 2d January 1836, ... II. 237

26. To entitle the pleaders to ½ of the full fee in cases withdrawn or dismissed on default, it is requisite that the whole of the pleadings should have been filed, not merely the answer or *juwab dawee*. No. 1052, W. C. 14th October, C. C. 11th November 1836, ... II. 284

27. When a pleader has been dismissed by a zillah judge, it is not competent to the judge's successor to permit that pleader to practise, without sanction being obtained from the Sudder Dewanny Adawlut to review the order for dismissal. No. 1082, W. C. 31st March, C. C. 14th April 1837, ... II. 303

28. When a pleader who has been dismissed, refuses or neglects to give up his *sunnud* of office, the judge should summon him to attend at his court; and in the event of his neglecting to attend, or attending, to give up his sunnud, the judge is competent to punish him for evasion of process, or contempt of court. No. 1083, C. C. 31st March, W. C. 21st April 1837, ... II. 304

29. When a suit has been sent back for re-trial, the pleaders in the original case should be required to refund the fees received by them, leaving it to the court who eventually decide the case to apportion to them such part of the authorized fee as may appear an adequate remuneration for the trouble they had taken in the matter. [*This supersedes Construction 840, which required that a second full*

fee should be deposited.] No. 1105, W. C. 6th September, C. C. 20th September 1838,..... II. 320

30. The mere circumstance of a vakeel of the judge's court being authorised by that officer, under the discretionary power vested in him by Clause 3, Section 18, Regulation V. 1831, to practise in the court of a principal sudder ameen, either in any case, or particular class of cases [such, for instance, as those in which Government or its officers are parties,] cannot be considered as constituting such vakeel, a vakeel of the principal sudder ameen's court within the intent and meaning of Clause 1 of the same Section, which prohibits the principal sudder ameens from trying suits in which their vakeels are parties. [*This prohibition has been removed by Section 1, Act XXVII. 1838, the Construction, however, still applies to the vakeels of the courts of the sudder ameens.*] No. 1149, W. C. 27th April, C. C. 18th May 1838,..... III. 13

31. A pleader appointed under Section 2, Regulation XII. 1833, can practise *under the rules contained in the enactment* in the judge's court only: but he may be authorised by Clause 3, Section 18, Regulation V. 1831, to practise in the court of the principal sudder ameen under the rules in force for that court. [*By a Government notification dated 8th June 1841, the provisions of Regulation XII. 1838, have been extended to the courts of the principal sudder ameens and sudder ameens in the Lower Provinces; and by a Circular Order, Sudder Dewanny Adawlut, Western Provinces, dated 27th September 1839, to the principal sudder ameens and sudder ameens in the Western Provinces.*] No. 1168, C. and W. C. 17th August 1838, ... III. 26

32. The provisions of Clause 6, Section 2, Regulation XII. 1833, which declare that private engagements between pleaders and their clients, are only to be enforced by a regular suit, apply equally to pauper as to other suits. No. 1297, C. C. 26th May, W. C. 18th June 1841, ... III. 79

33. The provisions of Clause 5, Section 2, Regulation XII. 1833, by which parties are allowed to settle with their pleaders for their fees, are applicable to pauper as well as other cases. No. 1309, W. C. 15th September, C. C. 22d October 1841, III. 62

34. Money deposited in court as payable to a party, should never be paid to a vakeel, save under specific authority conveyed in the *vukalutnamah*: and for any sum paid away in any other mode, the officer making the disbursement must be held personally responsible. No. 1360, W. C. 5th August, C. C. 9th September 1842,..... III. 97

PLEADERS IN CRIMINAL COURTS.

1. A single judge of circuit holding a session of jail delivery, is competent, in concert with his law officer, to allow a person held to bail, to attend and plead by a *vakeel* duly constituted; when strong and sufficient reasons may be stated for dispensing with his personal attendance, and his attendance in person is not required by the provisions of the Mahomedan law. The *vakeel* need not be one of the regular pleaders of the court. No 295, 27th August 1818,..... I. 117

2. The "*vakeel*" alluded to in Section 3, Regulation XV. 1824, need not be one of the constituted pleaders of the civil court, though they may be allowed to act as agents in criminal cases. The persons so employed, must be left to settle with their constituents for the amount of fee to be paid for their trouble. No. 371, 26th November 1824, ... I. 154

3. The vakeels of the Sudder Dewanny Adawlut may present petitions to the Nizamut Adawlut. No. 563, 19th June 1830, ... I. 286

4. A magistrate is competent to refuse to acknowledge a mokhtar in his court, who may be proved guilty of any gross misconduct in the execution of his duty in that capacity. [See also Construction 909, No. 8.] No. 607, 16th November 1831, ... I. 252

5. Persons appealing from the orders of magistrates may employ whom they please to conduct their appeals. Such agents must secure their remuneration before hand, and are entitled to no assistance to enforce their demands afterwards. No. 642, 10th June 1831, ... II. 13

6. In continuation of Construction 607, the Court ruled that one proved act of gross misconduct in a mokhtar is sufficient to warrant his general rejection. No. 809, C. C. 2d August, W. C. 6th September 1833, ... II. 115

7. Parties committed for trial before the sessions court and not exempted from personal attendance under Section 3, Regulation VI. 1818, may be allowed to avail themselves of the advice of vakeels or agents; but such vakeels or agents cannot be permitted to plead, or interfere in any way in the court's proceedings. No. 1012, C. C. 10th June, W. C. 20th June 1836,..... II. 258

PLEADINGS.

See "Stamps, IV."

POLICE OFFICERS.

1. The constructions 49, 50, and 51, relating to the report to be made to the court of circuit on the appointment and removal of police officers, are now obsolete,—the control over all the officers of a magistrate's court, police or ministerial, being vested in the superintendent of police. Nos. 49, 50, and 51, 3d October 1809,..... I. 12

2. A police darogha may summon respectable persons to attest confessions, reporting to the magistrate the cases of persons refusing to attend. No. 101, 23d August 1812, ... I. 26

3. Police daroghas do not possess the power of compelling the appearance before them of persons acquainted with the commission of offences. No. 189, 7th December 1814, ... I. 59

4. Police daroghas are not required to perform the duties prescribed by Section 22. Regulation I. 1812, to prevent an evasion of the custom duties. No. 317, 30th June 1820, ... I. 130

5. Police officers are strictly prohibited from taking cognizance of cases of burglary or theft unattended with personal violence, unless the injured party request their interference by a written petition. No 708, W. C. 27th July, C. C. 24th August 1832, ... II 51

6. Though thanehdars and other police officers do not come strictly within the terms of Section 9, Regulation XIII. 1793, Section 12, Regulation XII. 1803, and Section 10, Regulation X. 1806, the magistrate, if he have reason to suspect that a charge of corruption against such officer is false and unfounded, may require the person preferring it to give security for his attendance till the final decision of the case. No. 731, W. C. 2d November, C. C. 30th November 1832, ... II. 63

7. A police mohurrir would not be justified in refusing to record any declaration or confession which a prisoner may wish to make. No. 733, C. C. 9th November 1832, ... II. 64

8. Section 8, Regulation XI. 1831, which gives commissioners the control over the magistrates' orders in regard to the appointment of police officers, is applicable to the whole of the ceded and conquered provinces, and not to those districts only in which *thuneedaary* establishments are entertained No. 736, W. C. 9th November, C. C. 7th December 1832, ... II. 75

9. Police officers have no authority to interfere in regard to the transfer of property bought and sold. No. 747, W. C. 30th November, C. C. 28th December 1832, ... II. 73

10. The magistrate of Burdwan was censured for arresting a police darogha of Beerbhoom, while in the execution of his duty, in serving a warrant issued to him by the magistrate of the latter district, and was informed that he should have postponed requiring the *darogha's* attendance until he had completed the duty on which he was deputed by his immediate superior. No. 851, 26th December 1833, ... II. 145

11. An appeal lies from the magistrate's order regarding all police officers, without reference to the amount of their salary. No. 907, W. C. 10th October, C. C. 7th November 1834, ... II. 185

12. Where the magistrate has thrown out a charge of corruption against a police officer, the case is cognizable not by the superintendent of police but by the session judge, who may receive the appeal, and, if he think proper, direct the magistrate to commit. [*Under Act XXXI. 1841, the magistrate's order acquitting the accused is final according to the Construction of the N. A. for the Lower Provinces.*] No. 1134, C. C. 2d March, W. C. 16th February 1838, ... III. 6

13. A magistrate may refer a case of rape to a darogha for investigation. No. 1174, C. C. 21st September, W. C. 31st August 1838, ... III. 29

14. Police officers are not authorised to levy fines on account of cattle trespassing. No. 1176, C. C. 21st September, W. C. 31st August 1838, ... III. 30

15. A session judge may order the dismissal of any police officer convicted on a trial in the session court of an offence which may require his removal from office. No. 1328, C. C. 1st March, W. C. 15th April 1842, ... III. 87

16. A thanadar may enter on an enquiry into a charge of rape preferred directly at the thanah—no complaint having been, in the first instance, preferred to the magistrate. No. 1365, W. C. 19th November, C. C. 9th December 1842, ... III. 98

POST OFFICE.

1. The provincial courts are at liberty to receive petitions from officers of the judge's or magistrate's court by dawk and act thereupon. No. 344, 13th July 1821, ... I. 141

2. A commissioner may call for the magistrate's proceedings on information received by dawk, if such measure appear to him necessary for the ends of justice; but a party is not regularly entitled to have his petition attended to, unless presented by himself in person, or by his representative duly authorized. No. 513, 17th July 1829, ... I. 218

3. The Nizamut Adawlut have no authority to exempt zumeendars paying a small revenue to Government from contributing to the expense of the establishment of dawk runners: but the magistrate, in enforcing the provisions of Regulation XX. 1817, will exercise his discretion according to the circumstances of each case, leaving the party dissatisfied to appeal. No. 728, 26th October 1832, ... II. 61

4. To legalise a conviction under Section 32, Act XVII. 1837, the prosecution should *originate* with the officer of the post office department The magistrate has no power to mitigate the fine of 50 rupees for the offences described in Sections 9 and 10 of the Act, and the fine if not paid must be levied under the rules of Act II. 1839. No. 1204, W. C. 15th March, C. C. 1st April 1839, ... III. 45

5. The mere act of writing a letter which is forwarded by a private post, does not necessarily subject the writer of it to punishment as an accessory to its conveyance. But if A deliver a letter to B for the purpose of his conveying it by post, for hire, from one place to another, and B so conveys it, A is accessory before the fact to such conveyance within the meaning of Act XVII. 1837. No. 1263, W. C. 22d November 1839, C. C 3d January 1840, III. 69

6 With reference to the words "by post" in Section 5, Regulation XVII. 1837, it was held that

the mere conveyance from place to place, for hire on a consideration, constitutes the act made penal by the section quoted. No. 1289, W. C. 30th October, C. C. 20th November 1840,..... III. 77

7. Sections 33 and 35, Act XVII. 1837, are not applicable to European British subjects resident in the Mofussil. No. 1290, W. C. 21st May, C. C. 18th June 1841, ... III. 79

8. Putneedars are included in the terms "landholders, proprietors, and farmers of land," made use of in Clause 4, Section 10, Regulation XX. 1817, and are therefore liable to be called on to name and appoint persons to convey the dawks. No. 1864, C. C. 2d September, W. C. 23d September 1842,..... III. 98

POSTPONED TRIALS.

1. A judge of circuit having postponed a trial for further evidence, is not competent to complete it, he being no longer in that situation. The trial must be completed by the judge who holds the next ensuing sessions. No 81, 15th March 1811, ... I. 19

2. In a postponed trial, the attendance of the prosecutor and witnesses, who had gone to their homes in the Oude territory, not being procurable, the case should be brought on at the next sessions, when the prisoners should be acquitted, if the magistrate should be unable to lay before the judge of circuit evidence sufficient for their conviction, although they might be held to security for their future good behaviour, previous to their release, if, on consideration of the proceedings held in the case, there should appear sufficient grounds to warrant that measure. No 200, 29th March 1815,..... I. 63

3. If, in a committed case, neither prosecutor nor witnesses attend at the session, the trial should be postponed to the next session, and the magistrate directed to adopt every practicable measure for causing their attendance; after which, if no sufficient reason appear for again postponing the trial, the prisoner should be discharged, with or without security, as may appear proper in consideration of the magistrate's proceedings on the commitment. No. 256, 21st August 1816, ... I. 89

4. When in a postponed trial commenced before a jury, it may be impracticable from death or other cause to procure the attendance of all persons composing the jury, new jurors should be appointed in the room of those whose attendance cannot be procured; the former evidence should be read over to them, and fresh evidence taken, in the same manner as formerly, when a postponed trial came on before a circuit judge and law officer, who did not sit on the original trial. No. 828, C. C. 13th September, W. C. 4th October 1833,..... II. 127

POTTAHS.

1. The existing regulations do not authorise any summary process in case of complaints of *ryots* or other under tenants against landholders or farmers, for refusing to grant *pottahs* or give receipts: but on the *ryots* establishing their claims to receipts or pottahs in a regular suit, they are entitled to receive them as well as damages from the party refusing. No. 67, 16th August 1810,..... I. 16

2. Regulation V. 1812, contains no provision for a summary suit, to compel *ryots* to take pottahs and give kubooliyats: but the landholder may proceed in conformity with Section 5, Regulation IV. 1794, and Sections 9 and 10, Regulation V. 1812. No. 247, 4th September 1816, ... I. 89

See "Stamps, II." No 18.

PRACTICE.

1. If the defendant do not appear in person or by vakeel, within the time limited in the proclamation prescribed by Section 11, Regulation IV. 1793, the suit should be tried *exparte:* but if the defendant appears, at any time before the final decision of the suit, and assigns satisfactory reasons, to shew that the default was not wilful, he should be permitted to file his answer, notwithstanding the commencement of an *exparte* investigation; and adduce evidence in support of it, if the merits of the case appear to require it. No. 875, 4th February 1825, ... I 155

2 A person whose security had been tendered in a cause about to be appealed to the King in Council, petitions the Sudder Dewanny Adawlut against its acceptance, and prays that the security bond may be cancelled and returned to him. The appellant who filed the bond prays that it may be restored to him. The majority of the Court held that the document should be returned to the appellant as the party by whom it was filed, and a copy of it retained in the office; and rejected the petitioner's application. No 524, 4th September 1829, ... I 223

3. The original exhibits and other papers, and documents and deeds filed in a suit, being missing, the parties are at liberty to file copies of such of the missing papers, as they may have by them, or be able to furnish. No. 869, 14th February 1834, II 158

4. If a defendant absent himself after filing his answer, a notice of eight days should be affixed in the court house; and in the event of the defendant's not appearing within that time, the case should be tried *exparte*. No. 1317, W. C. 18th January, C. C. 11th February 1842,..... III. 85

PREEMPTION.

See "Stamps, III." No. 18.

PREFERRING A CLAIM.

See "Original Suits, VI." Nos. 5, 10.

PREVARICATION.

See "Perjury," No. 13.

PRINCIPAL SUDDER AMEENS.

1. No appeals are cognizable by a principal sudder ameen but those which may have been referred to him by the judge with the sanction of the Sudder Dewanny Adawlut. No. 676, 24th February 1832, ... II. 34

2. The judge may employ the principal sudder ameens in the same manner as other sudder ameens, in the adjustment of accounts, or in the investigation of disputes, or special matters of account, fact, or usage, connected with the execution of decrees passed in the judge's court; *but under the regulations in force no authority exists for referring to such officers applications for the execution of other decrees than those passed in the courts of the sudder ameens and moonsiffs.* [*By Act V.* 1836, *applications for the execution of decrees generally may be referred to principal sudder ameens.*] No. 761, W. C. 22d February, C. C. 15th March 1833, ... II 84

3. A principal sudder ameen cannot confirm a decision in appeal without summoning the respondent. No. 796, W. C. 14th June, C. C. 5th July 1833, II. 105

4. A suit to which the collector is a party cannot be referred to a principal sudder ameen. [*Superseded by Act XI.* 1836, *and Construction* 1112.] No. 801, W. C. 5th July, C. C. 2d August 1833, II. 109

5. A principal sudder ameen cannot confine a defendant without the sanction of the judge. No. 947, W. C. 1st May, C. C. 22d May 1835, ... II. 209

6. A principal sudder ameen cannot allow a defendant to plead *in formâ pauperis* without the sanction of the judge, it being a principle that the judge only can determine the question of pauperism. [*But see C. O. of the 11th April* 1843.] No. 949, C. C. 1st May, W. C. 5th June 1835, ... II. 210

7. Summary suits for dispossession cannot be referred to principal sudder ameens. [*Superseded by Section* 8, *Act XXV.* 1837, *under which any miscellaneous matter may be referred to these officers.*] No. 995, C. C. 24th December 1835, W. C. 22d January 1836, ... II. 241

8. When a judge has modified or confirmed the order of a principal sudder ameen imposing a fine, he may refer the case to that officer for execution. [*But see Circular Order S. D. A. 16th September* 1842.] No. 1020, C. C. 1st July, W. C. 22d July 1836, ... II 263

9. Suits regarding slavery are cognizable by the native judges, though it is considered inexpedient that they should go before a native judge, if the reference to an European judge be practicable. [*Suits regarding slavery cannot now be brought in any of the courts, Act V. of* 1843.] No. 1022, C. C. 8th July, W. C. 15th July 1836, ... II. 264

10. A principal sudder ameen trying an appeal from the decision of a moonsiff, cannot refer the case to the moonsiff for further investigation: but if he be of opinion that the moonsiff has improperly nonsuited a case, he should return it to the judge with his opinion that the moonsiff should be directed to re-admit and try it on its merits. No. 1023, C. C. 6th July, W. C. 5th August 1836, ... II. 244

11. A principal sudder ameen trying a case sent back by the Sudder Dewanny Adawlut for re-trial, is competent to adjudge the costs in all the courts, as may appear just; his order being of course open to appeal. No. 1037, C. C. 12th August, W. C. 2d September 1836, ... II. 275

12. The decrees of principal sudder ameens need not be written on English paper. [*But see Circular Orders, Sudder Dewanny Adawlut, 21st May* 1841 *and 30th December* 1842.] No. 1109, W. C. 15th September, C. C. 27th September 1837, II. 324

13. Suits in which Government and its officers are parties are referrible to principal and other sudder ameens. No. 1112, W. and C. C. 10th November 1837, ... II. 327

14. Pleadings in suits exceeding 5000 rupees, referred to the principal sudder ameens, must be written on stamp value one rupee. No. 1118, W. C. 15th December 1837, C. C. 5th January 1838, ... II 331

15. Appeals from orders passed by principal sudder ameens under Clause 6, Section 3, Regulation VII. 1825, in execution of their own decrees in suits above 5000 rupees, also all summary appeals from the decisions of principal sudder ameens under Sections 4 and 5, Regulation II. 1806, in cases exceeding 5000 rupees, lie to the Sudder Dewanny Adawlut. But appeals in all other summary or miscellaneous proceedings transferred to the principal sudder ameens under Section 8, Act XXV. 1837, whether the amount exceed or be less than 5000 rupees, lie in the first instance to the judge and specially to the Sudder Dewanny Adawlut. No. 1148, W. C. 27th April, C. C. 11th May 1838, ... III. 12

16. The provisions of Act XXV. 1837, in extending the powers of the principal sudder ameens do not affect that part of Clause 1, Section 18, Regulation V. 1831, which prohibits the reference to those officers of suits in which themselves, their relatives or dependants, *or the vakeels or officers of their court*, may be a party. [*Section* 1, *Act XXVII.* 1838, *rescinds so much of the above clause as prohibits the reference to principal sudder ameens of suits in "which the vakeels or officers of their courts" are parties.*] No. 1149, W. C. 27th April, C. C. 18th May 1838, ... III. 14

17. But the mere fact of a vakeel of the judge's court being authorized by that officer, under the discretionary power vested in him by Clause 2, Section 18, Regulation V. 1831, to practise in the court of a principal sudder ameen, either in any particular case, or particular class of cases, such as for instance those in which Government or its officers may be a party, cannot be considered as constituting such vakeel a

vaked of the principal sudder ameen's court, within the intent and meaning of Clause 3 of the section cited. [*By a Government notification, dated 8th June 1841, the provisions of Regulation XII. 1833, have been extended to the courts of the principal sudder ameens and sudder ameens in the Lower Provinces; and by Circular Order, Sudder Dewanny Adawlut, Western Provinces, dated 27th September 1839, to the principal sudder ameens and sudder ameens in the Western Provinces.*] No. 1149, W. C 27th April, C. C. 18th May 1838, ... III. 14

18 The law does not require that the judge should confirm all appointments by the native judges of the ministerial officers of their respective courts This interference should be restricted to prevent the appointment of improper persons, and the dismissal, without good and sufficient reason, of those already appointed. No. 1160, W. C. 27th July, C C. 17th August 1838,..... III. 18

19. A pleader appointed under Section 2, Regulation XII. 1833, can practise *under the rules contained in that enactment* in the judge's court only: but he may be authorized by Clause 3, Section 18, Regulation V. 1831, to practise in the court of the principal sudder ameen under the rules in force for that court. [*By a Government notification dated 8th June 1841, and a Circular Order for the Western Provinces dated 27th September 1839, the provisions of Regulation XII. 1833 have been extended to the courts of the principal sudder ameens and sudder ameens in the Lower and Western Provinces.*] No. 1168, C. and W. C. 17th August 1838, ... III. 26

20. An appeal on the merits lies from the decisions of principal sudder ameens in suits under Regulation XLIX. 1793. [*Obsolete.*] No 1202, C. C. 15th February, W. C. 8th March 1839,.. III. 44

21. A judge cannot transfer of his own authority to a principal sudder ameen applications for the execution of the decrees of moonsiffs appointed under Regulation V. 1831: all decrees passed by moonsiffs must, under Section 7, Regulation VII. 1832, be enforced by those officers, except under such circumstances as would have precluded them by law from hearing and determining a regular suit No. 1223, W. C. 7th June, C. C 12th July 1839, ... III. 55

22. Sections 10 and 12, Regulation XXVI. 1814, though applicable to the courts of the principal sudder ameens, are not to those of the *sudder ameens* and moonsiffs. [*Circular Order, Sudder Dewanny Adawlut, 20th August 1841, modifies this construction and declares the sections cited applicable to the courts of the sudder ameens.*] No. 1226, W. C. 21st June, C. C. 2d August 1839, ... III.

23. The processes of principal sudder ameens and sudder ameens, required to be enforced in another district, should be issued under their seal and signature as prescribed by Clause 4, Section 15, Regulation V. 1831, and, with reference to Clause 3, Section 2, Regulation II. 1806, be sent by the sudder ameens to the judge of the zillah or city court in which they are to be executed. No. 1235, W. C. 19th July, C. C. 9th August 1839, ... III. 59

24 If in an appeal from the decision of a moonsiff, the principal sudder ameen should be of opinion that the matter at issue was of such a nature as to render a reference to the collector under the provisions of Section 30, Regulation II. 1819, necessary, he should not remand the suit to the moonsiff but send the case to the judge, under the Circular Order, Sudder Dewanny Adawlut, dated 14th June 1839, recommending the annulment of the moonsiff's decision, and the return of the case to that officer on the ground that he ought to have rejected the suit in the first instance, as illegally instituted, and in order that he should now follow that course. No. 1261, C. C. 3d January 1840, W. C 6th December 1839, III. 68

25 All cases under the provisions of Regulation VII. 1819, are referrible to the principal sudder ameens for investigation and report. No. 1265, W. C. 6th December 1839, Government 10th March 1840, ... III. 69

26. In a suit laid at a sum exceeding 5000 rupees, in which the principal sudder ameen gives a decree for a sum less than that amount, the appeal from the decision lies to the Sudder Dewanny Adawlut. No 1282, C C. 7th August, W. C. 26th August 1840,..... III 76

27. The mode of proceeding laid down in Section 7, Regulation VII 1832, is to be followed in the case of defendants ordered into confinement by the principal sudder ameens in suits exceeding 5000 rupees No 1284, C C 7th August, W. C 7th September 1840, ... III 76

28. The judge cannot depute to a principal sudder ameen the duty of making the enquiry contemplated by Section 1, Act IX. 1839, in the case of parties applying to sue *in formâ pauperis*: i. e. whether there is probable cause for instituting the suit. [*See C. O. 11th August 1843.*] No. 1285, W. C. 7th August, C C. 7th September, 1840, ... III 76

29 Principal sudder ameens may, with the consent of the parties, refer suits to arbitration. No. 1292, C. C. 26th March, W. C. 10th April 1841, ... III. 78

30. The order of a zillah judge dissenting from a principal sudder ameen as to the propriety of a review of the latter's judgment on a reference made under Clause 2, Section 19, Regulation V. 1831, is final, and not open to revision on appeal to the Sudder Dewanny Adawlut No 1294, C. C. 14th May, W. C. 28th July 1841,..... III. 79

31. In a suit cognisable by a moonsiff referred to a principal sudder ameen under Section 5, Act XXIV. 1837, that officer is not bound by the rules respecting *stubana* for service of process, and the receipt of

supplemental proceedings, applicable to the court of the moonsiff. No. 1362, W. C. 26th August, C. C. 9th September 1842,..... III. 98

PRINTING PRESSES.

1. It is imperative upon a magistrate under the provisions of Act XI. 1835, to sentence any person convicted of a breach of that law, to imprisonment in addition to fine. If the fine be not paid, it is to be levied under Act II. 1839, and not commutable to a further period of imprisonment. No. 1325, C. C. 11th February, W. C. 11th March 1842,..... III. 86

PRIVITY TO BURGLARY.

See "Exemption *from* Labor," No. 4.

PROCESSES.

See "Collectors," Nos. 6, 7, 8, 26, 31.
"Moonsiffs III." *passim.*
"Principal Sudder Ameens," Nos. 5, 8, 23.
"Sudder Ameens," No. 24.

PROCLAMATIONS.

1. Magistrates warned not to issue proclamations of a general nature. No. 382, 22d April 1825,... I. 158

PROCLAIMED OFFENDERS.

1. The proclamation prescribed in Section 3, Regulation IX. 1808, can only be issued against persons charged with *dacoity*, or gang robbery, to which the provisions of the regulation are expressly directed. No 117, 21st January 1813, ... I. 34

2. The provisions of Section 14, Regulation IX. 1808, [which declare the estate or farm of the offender liable to forfeiture to Government,] apply only to the case of harbouring or aiding *dacoits*, proclaimed in conformity with Section 3 of that Regulation. No. 118, 25th January 1813, ... I. 34

3. The proclamation prescribed by Section 3, Regulation IX. 1808, cannot be issued against persons inhabitants of a foreign territory. No. 127, 1st July 1813, ... I. 36

4. All proclaimed offenders must be tried under Regulation IX. 1808, as modified by Regulation V. 1822, i. e. they may, according as the superintendent of police may decide, be tried either for the contumacy, or for the offence for which they were proclaimed. If tried on the original charge, the court trying them may award the full sentence or that mitigated by Regulation XVI. 1825, as the case may be aggravated or unaggravated; referring the trial to the Nizamut Adawlut, where the full, or ordering execution of the sentence without reference, where the mitigated sentence may be passed. When the trial may be for the contumacy only, and the prisoners may be convicted on the charge, the judge trying them should still conform to the provisions of Section 8, Regulation IX. 1808, i. e. pass the full sentence of imprisonment in transportation for life, and refer the trial to the Nizamut Adawlut. No. 435, 3d November 1826, I. 182

PROVINCIAL COURTS.

N. B. The Provincial Courts were abolished by Regulation II. 1833.

1. A single judge is authorized by Clause 2, Section 2, Regulation XIII. 1810, to try and decide original suits as well as appeals: and Clause 4, Section 4, has reference to the possible completion of the trial before two or more judges after having been commenced by a single judge. No. 66, 16th August 1810, ... I. 15

2. Clause 4, Section 2, Regulation XIII. 1810, restricts a single judge from dismissing on default appeals from judgments and orders passed by himself, as well as from sitting on appeals from judgments passed by himself, even in company with other judges. No. 70, 29th November 1810, ... I. 16

3. A single judge under Clause 4, Section 4, Regulation XIII. 1810, is competent to exercise the power vested in the provincial court collectively by Section 18, Regulation V. 1793, as far as respects the admission of further evidence to be taken for the decision of the provincial court: but he cannot refer a suit back to a zillah or city court for further investigation or decision without the concurrence of one or more judges in conformity with Clause 3, Section 2 of the above Regulation. No. 74, 10th January 1811,..... I. 17

4 If a single judge record his opinion that the decision of the zillah or city court should be reversed or altered, another judge concurring, may pass a final order without waiting the actual presence of two judges at the same sitting. No. 83, 28th March 1811,..... I. 19

5. The provincial court may exercise their discretion in directing the appellant to be restored to possession after the respondent has been put in possession under the zillah decree. No. 90, 12th September 1811, ... I. 21

6. A single judge may exercise this power, since his ordering the appellant to be restored to possession would involve no difference of opinion with the zillah or city judge: unless the zillah or city judge had refused to stay execution of his decree, after an appeal had been preferred, on the ground of the security tendered being insufficient, in such case as the single judge could not order the appellant to be restored without admitting the validity of the security, his ordering that measure would involve a difference of opinion with the zillah or city judge, and would of consequence exceed his competency. No. 90, 12th September 1811, ... I. 21

7. Should it appear from the abstract statement of decided causes transmitted to the provincial court by a zillah judge that he has not adjudged on trial the prescribed number of causes, it is within their competency to require him to furnish an explanation of the same. No. 150, 7th April 1814, ... I. 47

8. A single judge of a provincial court may admit a special appeal. [*Superseded by Section 5, Regulation IX. 1819, which requires two judges of the provincial court to admit a special appeal.*] No. 282, 23th December 1816, ... I. 96

9. The order of a single judge making the heirs of a deceased respondent answerable for the costs of suit adjudged against the respondents, being final under Clause 2, Section 4, Regulation XIII. 1810, could not be reversed by two other judges except by a review, with the authority of the Sudder Dewanny Adawlut. No. 280, 28th August 1817, ... I. 102

10. Of three judges present, two differ, and the third was precluded from giving an opinion as the appeal was from a decision of his: as the senior judge has no casting vote, the case must be postponed till another judge join the court. No. 363, 9th April 1824, ... I. 151

11. The court to exercise their discretion in regard to the distribution of business. No. 510, 5th June 1829, ... I. 217

12. The Dacca provincial court informed that they were authorised to attach, through their own officers, land and other amenable property, situate within the city of Dacca, in execution of their own decree. No. 586, 8th April 1831, ... I. 245

13. A single judge is competent to direct a zillah or city judge to suspend execution of an order passed in such summary suits as are appealable and generally in all miscellaneous cases, until a decision shall have been passed on the appeal. No. 591, 15th April 1831, ... I. 247

14. A complaint against a pundit sudder ameen of a zillah court having been pending for some time in the provincial court, before the extension of Regulation V. 1831, to that zillah, it was held that the provincial court should dispose of it. No. 680, W. & 7th March, C. C. 30th March 1832, ... II. 36

15. On the extension of Regulation V. 1831, to any district, the duty of submitting appeals to the Sudder Dewanny Adawlut, &c. &c. hitherto performed by the provincial court, must be performed by the zillah or city judge. No. 681, 9th March 1832, II. 37

16. The commissioner of the northern division of the Doab informed that though his powers as a court of original jurisdiction ceased under Section 3, Regulation II. 1833, he could exercise appellate jurisdiction until the Governor General in Council, under the authority vested in him by that Regulation, should abolish his appellate authority. No. 789, W. C. 10th May, C. C. 7th June 1833, ... II. 101

17. The provisions of Section 3, Regulation II. 1833, should have effect from the date of its promulgation, i. e. its receipt by the court. The transfer of original suits should not be delayed for the receipt of any further communication from the Judicial Department, and any decisions in such suits passed after that date are illegal. No. 791, C. C. 10th May, W. C. 14th June 1833, ... II. 103

18. Petitions of special appeal from decisions of zillah and city judges pending undecided before the provincial courts at the time of their abolition, must be heard and disposed of by the Sudder Dewanny Adawlut. No. 814, W. C. 23d August, C. C. 27th September 1833, ... II. 118

19. A single judge of the Sudder Dewanny Adawlut may reject a petition of special appeal transferred from an abolished provincial court, although a judge of the latter court have recorded an opinion for the admission of the appeal. No. 845, W. C. 29th November, C. C. 20th December 1833, ... II. 142

20. In appeals received by the Sudder Dewanny Adawlut from the abolished provincial courts, the same stamps are to be used, as if the appeal had been instituted in the Sudder Dewanny Adawlut. The rule holds good in regard to original suits transferred from the provincial to the zillah and city courts, where the same stamp will be used as is used in the zillah or city court. No. 880, W. C. 14th April, C. C. 14th March 1834 and 2d May 1837, ... II. 168

PUBLIC HEALTH AND CONVENIENCE.

1. The term "householder" in Act X. 1842 is applicable to "house proprietors" and not to tenants. No. 1367, W. C. 22d December 1842, C. C. 20th January 1843, ... III. 99

2. When an application to be placed under the operation of this Act has been made, the operation of the Act is permanent, but a revision of the rates may be made by the committee annually. No. 1367, W. C. 22d December 1842, C. C. 20th January 1843, ... III. 99

3. No persons not "being inhabitants of the place" brought under the operation of the Act, can be appointed members of the committee. No. 1367. W. C. 22d December 1842, C. C. 20th January 1843, ... III. 99

4. The members of the committee are jointly and severally responsible for any misapplication, whether fraudulent or otherwise: but whether any act complained of was a "misapplication" or not will be determinable by a civil suit. No. 1367, W. C. 22d December 1842, C. C. 20th January 1843, III. 99

PUBLIC OFFICERS, COMPLAINTS AGAINST

1. A commissioner appointed under Act XXVI. 1839, not having subscribed the oath required by Section 11 of the Act, *before an officer authorized to administer the same*, his proceedings are altogether illegal and invalid. No. 1289, W. C. 28th November, C. C. 10th December 1840, ... II. 77

PUBLIC PROSECUTOR.

1. There is no objection against the superintendent of police or any other officer whom the Governor General in Council may appoint, not being the commitating officer, conducting a prosecution before the court of circuit, provided he be recognised as the prosecutor, or agent of Government, and be not authorised to interfere in any other capacity in the trial. No. 279, 9th July 1817, ... I. 101

2. In cases of commitments made by the superintendent as magistrate, he should not conduct the prosecution before the court of circuit: but his assistant or the assistant to the magistrate may be so employed. No. 279, 9th July 1817, ... I. 101

3. It is competent to the magistrate to direct any person whom he may think fit, to officiate as Government pleader to conduct a prosecution on the part of Government. No. 600, 23d September 1831.... I. 249

4. A magistrate may exercise his discretion in appointing the Government pleader to prosecute in cases of murder, notwithstanding there may be near relations of the deceased, competent to prosecute. No. 778, 6th April 1833, ... II. 92

PUNCHAYUT.

1. The decisions of *punchayuts* appointed under Regulation IX. 1833, should be enforced by the revenue authorities; the judicial functionaries having no power to carry them into effect. No. 895, W. C. 5th September, C. C. 26th September 1834, ... II. 179

See "Arbitration," No. 5.

PUTNEE TENURES.

1. The provisions of Section 8, Regulation VIII. 1819, expressly referring to "*zumeendars*, that is, proprietors under direct engagements with Government," they must be held to be restricted to those persons, and *lukhurajdars* cannot avail themselves thereof. No. 313, 5th May 1820, ... I. 129

2. The sales of *putnee* tenures must be made by the register [*since the enactment of Section* 16, *Regulation VII.* 1832, *by the collector*] of the district in which the talooks are situated and no other. No. 326, 1st September 1820,..... I. 134

3. The day for the presentation of petitions on the part of zumeendars for the half yearly sale falling in the vacation, it must be deemed commutable to the next day after the re-opening of the court, and the sale must not take place until a month from and after such day. No. 329, 15th September 1820, ... I. 134

4. The sale of *putnee* and *durputnee* tenures in execution of decrees should be conducted by the collector. No. 849, 26th April 1822, ... I. 144

5. The register of the zillah court is not amenable to a civil action for acts performed in his official capacity in selling *putnee* tenures: but the person aggrieved may obtain redress by an action against the zumeendar, whose allegation of arrears caused the sale, or the purchaser, or both. No. 440, 8th December 1826, ... I. 185

6. A *zumeendar* is not entitled to transfer to an *ijaradar* his right of obtaining periodical sales of *putnee* tenures for arrears of revenue under Regulation VIII. 1819, the individuals specified in Section 8, as entitled to apply for such sales being proprietors under direct engagements with Government. No 461, 7th September 1827,..... I. 196

7. The commission of 1 per cent. leviable for the use of Government under Clause 2, Section 17, Regulation VIII. 1819, should be levied on the net proceeds of the sale whatever that may be; the several deposits of 15 per cent. where there be more than one sale [together with the difference between the first, second and third sales claimable from the first and second purchasers, if any sum on this account should have been realised] being reckoned as part of the gross proceeds. No. 491, 9th January 1829, ... I. 209

8. A farmer under the court of wards has no authority to bring to sale *putnee* talooks, for the reasons stated in Construction 461. No. 523, 4th September 1829, ... I. 222

9. A *sudder putneedar* cannot exercise the same authority as is possessed by the *zumeendar*, with respect to his under tenants, of selling the tenure of his *durputneedar*, without previous application to the court. No. 531, 27th November 1829, ... I. 225

10. If the auction purchaser do not pay the balance of the purchase money by noon of the eighth day, he forfeits by his failure the deposit of 15 per cent. put in by him on the day of sale, and all right to benefit by an increased price at a second sale, while he will be answerable for any deficiency. The forfeited percentage is to be considered as part of the proceeds available for the benefit of the defaulter. Should it be sufficient to cover the balance claimed by the *zumeendar*, no further sale need take place: otherwise, [if the balance be not previously paid by the defaulter,] the *talook* must be re-sold on the ninth day, and any surplus of the forfeited percentage, and of the proceeds of the second sale, after liquidating the *zumeendar's* demand, must be paid to the defaulting talookdar. No. 580, 24th December 1830, I. 248

11. A *putnee* sale should take place before the register of the zillah court in the limits of which the talook is situated, and not of that of the collector in which the estate, of which it forms a part, is subordinate. *(Superseded by Section* 10, *Regulation VII.* 1832.*)* No. 597, 20th July 1831,... I. 248

12. The sale of *putnee* and *durputnee* tenures must be held by the register, or, in his absence, by the judge and magistrate: but all summary investigations relating to the rent demanded by the zumeendar must be conducted by the collector under Regula-

tion VIII. 1831. [*By Section* 16, *Regulation VII.* 1832, *the duty of selling putnee tenures has been transferred to the collector.*] No. 614, 16th December 1831, ... I. 254

13. All talooks in which the interest of the occupant is saleable, may be sold for an arrear of rent, accruing thereon: and the sale should be made by the register, or in his absence by the judge or magistrate [*now by the collector under Section* 16, *Regulation VII.* 1832] in the same manner as *putnee* and *durputnee* tenures under the provisions of Sections 9 and 16, Regulation VIII. 1819. No. 695, C. C. 25th May, W. C. 4th May 1832, ... II. 44

14. Pensions on the part of defaulting *putneedars*, whose tenures have been sold for arrears of rent, under Regulation VIII. 1819, previous to the enactment of Regulation VII. 1832, to receive the excess of the purchase money above the amount of the balance for which the tenure was sold, should be presented to the judge who holds the surplus in deposit. No. 795, C. C. 14th June, W. C. 19th July 1833, ... II. 105

15. *Putnee* and *durputnee* tenures must be sold in execution of decrees by the collector: and the report required by Section 2, Regulation XLV. 1793, made to the commissioner. No. 897, 5th September 1834, ... II. 182

16. *Putnee* talooks as such are sufficient security in cases appealed to the King in Council, if otherwise unexceptionable. No. 1004, 25th March 1836, ... II. 249

17. A *putneedar* having purchased in a fictitious name, the *talook* sold by auction for his default, cannot cancel the under tenures: and if he do so, the holder of such tenure has his remedy in an action for the recovery of possession against the fictitious purchaser, laying his suit at the value at which he estimates his interest in the property. No. 1243, C. C. 16th August 1839, Government 25th February 1840, ... III. 61

PUTTEEDARS.

See "Original Suits, VI." Nos. 6, 7, 9.

RAPE.

1. On a commitment for rape, a *razeenamch* is not admissible: if the woman on whom violence has been committed and her husband refuse to prosecute, the pleader of Government should be appointed to conduct the prosecution; the offence of rape being described in Clause 3, Section 6, Regulation XVII. 1817, as a heinous crime. No. 403, 24th August 1825, ... I. 168

2. There is nothing in the regulations which prohibits a magistrate from taking cognisance of cases of rape in which no complaint is preferred: but he should exercise this power with the utmost discretion and with due regard to the feelings of the injured party and her family. No. 670, 13th January 1832, ... II. 82

3. A magistrate may refer a case of rape to the darogha for investigation. No. 1174, C. C. 21st September, W. C. 31st August 1838, ... III. 29

4. A thanedar may under Sections 12 and 13, Regulation XX. 1817, enter on an enquiry into a charge of rape preferred directly at the thanch, no complaint having in the first instance been preferred to the magistrate. No. 1363, W. C. 19th November, C. C. 9th December 1842, ... III. 98

RAZEENAMEH IN CIVIL CASES.

1. Constructions Nos. 164, 181, 212, 242 and 260, relating to the fees receivable on cases disposed of by *razeenamch*, by the registers and sudder ameens and moonsiffs, are now obsolete.

No. 164, 2d June 1814, ... I. 50
No. 181, 17th August 1814, ... I. 56
No. 212, 15th July 1815, ... I. 68
No. 242, 24th February 1816, ... I. 81
No. 260, 26th December 1816, ... I. 90

2. Where the plaintiff's claim is not disputed by the defendant, it may generally be expected that the suit will be adjusted by *razeenamch*, in which case the provisions in force for the return of stamp duty in suits adjusted by *razeenamch* would be applicable; but the regulations do not authorize a return of the institution fee, or stamp duty substituted for it, in cases *decided* in favor of the plaintiff, on the acknowledgment of the defendant, without an investigation of the merits. No. 208, 1st June 1815, ... I. 67

3. In a similar case, if a *razeenamch* be filed, the vakeels would be entitled to $\frac{1}{2}$ or $\frac{1}{4}$ the full fee, as the *razeenamch* may have been filed before or after the pleadings have been filed. If the suit be allowed to go to a judgment in favor of the plaintiff, the vakeels are entitled to a full fee. No. 209, 1st June 1815, ... I. 67

4. In cases adjusted by *razeenamch* after evidence has been taken, the vakeels are entitled to the full fee, as if no *razeenamch* had been filed. No. 418, 5th May 1826, ... I. 175

5. The refund of stamp duty is authorized only when a *razeenamch* has been regularly filed: not in a case of *dustburdaree*, in which the plaintiff voluntarily relinquishes his claim. No. 977, 28th August 1835, ... II. 227

RAZEENAMEH IN CRIMINAL CASES.

See "Rape," No. 1.
See "Compromise of Theft," *passim*.

RECEIPTS.

See "Pottahs," No. 2.
See "Stamps, II." Nos. 10, 11.

RECOGNIZANCE.

See "Moochulkas," *passim.*

RECORDS.

1. There being no specific provisions in the regulations for compelling native officers of Government in the judicial department to deliver over charge of the records of their office, such cases fall within the general provisions of Section 21, Regulation III. 1793. No. 176, 3d August 1814, ... I. 55

2. The revenue authorities are not entitled to demand that the records of suits shall be sent to them for inspection: but they may depute an officer to inspect such records with the permission of the court. No. 693, 18th May 1832, ... II. 43

3. Translations of Beugallee papers in the record of an appealed case, made at the special request of the appellant, should be made at his expense: in all other cases by mohurrirs of the court or hired mohurrirs at the cost of Government, only papers material to the issue should be translated. No. 699, 29th June 1832, ... II. 46

4. Copies need not be made of the record of appealed cases, nor the originals submitted to the Court of Sudder Dewanny Adawlut, until called for by a precept. No. 742, 13th December 1832, ... II. 70

5. Construction 896 points out the mode of procedure in the records of a moonsiff's court being destroyed by fire. No. 896, W. C. 5th September, C. C. 3d October 1834, ... II. 179

6. The zillah judge ought not in ordinary cases to furnish officers employed in the resumption department with the original records of his court: but may furnish them with copies of any papers they may require on their authorising him to defray the expense of copying. Should the inspection of the original record, or any portion thereof be absolutely necessary, the judge, previously to forwarding the same, will retain an attested copy; the expense of making which must be defrayed by the revenue authorities. No. 1070, C. C. 27th January, W. C. 10th February 1837, ... II. 296

7. A moonsiff has the power of calling for the record of a case from any court, [such call being made through the judge of the district to which he is attached,] when any peculiar circumstances render it necessary for him to do so. But in general if any particular paper is required, the party who wishes to file it should obtain an attested copy, in the usual manner. No. 1269, C. C. 1st November, W. C. 6th December 1839, ... III. 68

REFERENCES OF CRIMINAL CASES TO LAW OFFICERS AND SUDDER AMEENS.

1. Suits instituted under Regulation XV. 1824, cannot be referred to sudder ameens though vested with special powers under Section 5, Regulation II. 1821. No. 416, 14th April 1826, ... I. 174

2. In cases referred for investigation and decision to sudder ameens by the magistrate, they have no authority to issue perwanchs to thanedars, daroghas, or other mofussil police officers: when necessity may exist, they will represent the matter to the magistrate who will issue the necessary orders. No. 451, 30th March 1827, ... I. 190

3. Such trivial criminal cases only should be referred to the law officers, as they are themselves competent to decide: cases of a graver nature should not be referred to such officers for investigation and report. No. 516, 24th July 1828, ... I. 219

4. A magistrate should not make over petitions, when first presented, to sudder ameens for report. No. 627, 28th February 1831, ... II. 6

5. The processes of sudder ameens in criminal cases referred to them, should be issued under their own signatures, but under the seal and through the officers of the magistrate. No. 741, C. C. 7th December 1832, W. C. 11th January 1833, ... II. 69

REFERENCE TO THE SUDDER DEWANNY ADAWLUT IN MISCELLANEOUS CASES.

1. A zillah judge was considered authorized under the Circular Order, Sudder Dewanny Adawlut, dated 18th April 1811, to state his objections to the provincial court, against the admission of a special appeal in English, as the subject was a "discussion regarding the relative power of European officers." No. 100, 23d April 1812, ... I. 26

2. A register is not authorised to call for an explanation of orders passed by the judge his official superior: but if the requisition of the judge to the register appear to the latter unauthorised by the regulations, he is at liberty to state his objections to the judge in a respectful manner, and in the English language, according to the spirit of Section 2, Regulation X. 1796, and Circular Order, Sudder Dewanny Adawlut, 18th April 1811. No. 273, 21st May 1817, ... I. 97

3. A judge and magistrate, deeming an order of the provincial court irregular as issuing to him, regarding civil matters, from the criminal department of that court, he should make his application to the Nizamut Adawlut through the provincial court under Regulation XXII. 1803, (Regulation X. 1796,) that the provincial court's reasons and explanation of their act may come before the Nizamut Adawlut at the same time with the objections. No. 328, 11th August 1820, ... I. 132

4. A magistrate is competent under Regulation X. 1796, (Regulation XXII. 1803,) to require a reference to the Nizamut Adawlut when he may deem an order passed by the circuit court [whether individually or collectively] to be repugnant to the regulations. No. 390, 10th June 1825, ... I. 161

5. The court of circuit are authorized to refuse to refer to the Nizamut Adawlut the magistrate's objections to their order, annulling his sentence on the ground that they did not deem the evidence sufficient for the conviction of the prisoners. No. 433, 23d October 1826, ... I. 182

6. The magistrate was informed that his withholding his proceedings until the circuit judge had thrice repeated his order, was irregular, and unwarranted by Regulation X. 1796, or any other Regulation. No. 437, 10th November 1826,..... I. 183

7. A zillah judge is not competent under the provisions of Section 2, Regulation X. 1796, to offer objections to an order of the provincial court in shape of a decree; the provisions cited being intended to apply to difference of opinion relative to the proper construction of regulations in miscellaneous matters, and not to the provisions of a decree; the remedy against which, if deemed erroneous by either of the parties interested, consists in appeal or review, to be applied for in the mode prescribed by the Regulations No. 479, 18th April 1828, ... I. 203

8. It is not competent to a zillah judge to demand a reference to the Sudder Dewanny Adawlut, on the plea that the provincial court have admitted a special appeal from his decision on other grounds than those authorized by the regulations, as the reference of the judge, under such circumstances, would be placing himself in the light of an advocate of one of the parties. No. 536, 1st January 1830, I. 227

9. A magistrate having determined to refer a disputed point to the Nizamut Adawlut, should not have decided the case out of which the point arose, until again directed to do so by the commissioner to whose order he objected No. 1080, C. C. 29th July, W. C. 2d September 1836, ... II. 270

REFERRED TRIALS.

See "Conduct of Trials," Nos. 3, 4, 5, 6, 8, 10, 13.

REFUSAL TO GRANT POTTAHS OR RECEIPTS.

1. "There is no summary process, on the complaint of ryots, to compel landholders or farmers to grant pottahs or to give receipts: but on the ryots establishing the refusal in a regular suit, they would be entitled to receive them, as well as damages from the party refusing, under Sections 59 and 63, Regulation VIII. 1793. No. 67, 16th August 1810, ... I. 16

REGISTER OF DEEDS.

1. The judge cannot officiate for the register of deeds, during the absence of the register, without deputation from the register. [*Superseded by Section 1, Regulation IV. 1824.*] No. 5, 10th May 1804,..... I. 2

2. Copies of deeds brought for registry, as directed in Section 2, Regulation XX. 1812, being intended merely for record, should be admitted to be drawn out on plain paper. No. 119, 28th January 1818, ... I. 84

3. The judge cannot register any description of deeds required to be registered by the register. [See however Section 5, Regulation IV. 1824.] No. 136, 19th August 1813, ... I. 89

4. The office for the registry of deeds should be fixed at the sudder station of the district. [*By Act XXX. 1838, registry offices may be established at other than the sudder station.*] No. 135, 19th August 1813, ... I. 89

5. Section 15, of Regulation XXXVI. 1793, expressly authorize the register to appoint a deputy to act for him while absent. [*See also Regulation IV. 1824.*] No. 135, 19th August 1813,..... I. 89

6. The person executing the deed, or his *mokhtar*, must attend before the register to acknowledge the execution, and one or more witnesses to the execution must also attend to prove the execution by their testimony on oath. When the person executing the deed deputes a *mokhtar* with a *mokhtarnamch*, to acknowledge the execution of the deed, the execution of the *mokhtarnameh* must be proved by the examination of two witnesses on oath: neither the party executing the deed, nor his *mokhtar* need be examined on oath. No. 296, 3d November 1815,..... I. 74

7. The civil surgeon may be appointed to officiate as register of deeds. [*See Regulation IV. 1824.*] No. 288, 25th February 1818, ... I. 110

8. An officiating register of deeds may act in that capacity while acting as collector. No. 866, 25th June 1824, ... I. 152

9. When copies of deeds, not filed in any court of judicature, are required from the office of register of deeds, such copies must be written on a stamp of the same value as the original deed, or one of 8 rupees, according as the party taking the copy may or may not have a direct interest in the subject matter of the deed. No. 428, 4th August 1826, ... I. 180

10. When a deed has been once filed in court, it becomes a record, and a copy may be taken on the stamp prescribed for copies of records. No. 428, 4th August 1826,..... I. 180

11. A register of deeds is not only competent but required to refuse to register a deed drawn up on an improper stamp. But if the value of the stamp equal or exceed the regular stamp in value, the register has no right to take exception to it, or to decline registering the deed so stamped. No. 438, 26th November 1826,..... I. 184

12. The registry of deeds is held to be a "civil proceeding" contemplated by Clause 2, Section 14, Regulation XVII. 1817; consequently in cases of perjury before a register of deeds, the judge and register should proceed according to the provisions of that clause. No. 611, 25th November 1831,... I. 253

13. A civil surgeon comes within the class of covenanted servants of the Company, who, by Sections 3 and 4, Regulation IV. 1824, may officiate as register of deeds. No. 611, 25th November 1831,... I. 253

14. Powers of attorney produced by persons attending in behalf of others to procure the registry of deeds should be entered in a separate book, as directed by Section 7, Regulation XX. 1812. No. 732, C. C. 9th November, W. C. 7th December 1832, ... II. 64

15. A register of deeds, not being the register of the zillah or city court, is entitled, while officiating for the judge in the absence of the latter, to fees on the registry of all deeds executed by him. No. 743, C. C. 14th December 1832, W. C. 5th February 1833, ... II. 70

16. Mokhtarnamehs should not be registered: nor deeds whereby a person binds himself or others to serve as slaves for a certain period. No. 812, 16th August 1833, ... II. 116

17. Held that as Balasore is not the sudder station of a district, a registry office cannot, under the existing regulations, be established there. [*But by Act XXX. 1838, a registry office may be established at other than the sudder station.*] No. 905, 3d October 1834, ... II. 184

18. The registry of a deed in any other district than that in which the land is situated, must be considered as unofficial, and as not entitling the deed to the preference conferred on registered deeds by Section 16, Regulation XXXVI. 1793 and Regulation XVII. 1803. No. 1015, C. C. 17th June, W. C. 8th July 1836, ... II. 260

19. A *hibehnameh*, or deed of gift, cannot be registered after the death of the donor, and the register was quite right in refusing to register it. No. 1218, C. C. 21st June, W. C. 24th May 1839, ... III. 53

20. A register of deeds would not be justified in refusing to register any document presented to him, by reason of its being written in the Persian language. No. 1230, W. C. 5th July, C. C. 2d August 1839, ... III. 58

21. Security bonds for the eventual payment of costs of suit, may be registered under the provisions of Section 5, Regulation XX. 1812. No. 1270, C. C. 10th January, W. C. 28th February 1840, ... III. 70

22. The register refused to register a deed of sale presented by A, as executed by him in favor of B, on the plea that a deed of sale for the same land, purporting to have been executed by A in favor of C, had already been registered by a person acting under A's mokhtarnameh duly attested. Held that the register should register the deed brought to him for that purpose, leaving it to the courts to decide which deed was the true and valid document: but that the register however should satisfy himself as to the identity of the person registering in person, or ascertain the due attestation and validity of the mokhtarnameh if by attorney. No. 1351, C. C. 22d July, W. C. 12th August 1842, ... III. 94

See also Acts Nos. I. and XIX. of 1843, for further rules regarding the registration of certain deeds.

REGISTER OF ZILLAH AND CITY COURTS.

1. The following Constructions concerning the powers, &c. of registers, having become obsolete by the abolition of that office, are not entered.

No. 36, 18th May 1808, ... I. 9
„ 191, 18th January 1815, ... I. 59
„ 194, 20th January 1815, ... I. 60
„ 211, 15th June 1815, ... I. 68
„ 216, 27th July 1815, ... I. 69
„ 223, 7th December 1815, ... I. 73
„ 251, 29th May 1816, ... I. 85
„ 273, 21st May 1817, ... I. 97
„ 285, 4th February 1818, ... I. 107
„ 355, 26th September 1823, ... I. 147
„ 356, 21st October 1823, ... I. 147
„ 440, 8th December 1826, ... I. 185

REGULATIONS, ERRORS IN.

1. Construction 22 points out an error in Section 49, Regulation VIII. 1793. No. 22, 6th August 1806, ... I. 6

2. Construction 557 points out an error in the Bengallee version of Article 7, Schedule A, and Article 10, Schedule B, Regulation X. 1829. No. 557, 28th May 1830, ... I. 234

3. Construction 585 points out an error in the Persian version of Clause 2, Section 16, Regulation XX. 1817. No. 585, 25th March 1831, ... I. 245

REGULATIONS, RECEIPT OF.

1. The date on which a regulation is received in an office should invariably be recorded thereon, the note being attested by the official signature of the judge. No. 566, 16th July 1830, ... I. 237

RELEASE OF CONVICTS.

1. A magistrate is not authorized under any circumstances to release a convict under sentence. No. 841, 11th October 1833, ... II. 135

2. A commissioner is not competent to authorize the release of a convict, either on security or otherwise, for the purpose of apprehending a proclaimed offender. No. 1013, W. C. 17th June, C. C. 1st July 1836, ... II. 259

3. Nor is the commissioner competent to release sick prisoners without the sanction of the Court. If he deem the removal for change of air necessary, he

may direct the magistrate to remove them to some other building, or to a neighbouring jail reporting the same for the Court's orders. No. 1016, W. C. 17th June, C. C. 16th July 1836, ... II. 260

RENT-FREE LANDS.

1. A collector cannot decline to take up a suit referred to him under Section 30, Regulation II. 1819, on the ground of the plaintiff being a public officer on his establishment. No. 320, 28th July 1820, ... I. 132

2. With reference to the value of stamp paper on which appeals from decisions of collectors under Clause 7, Section 30, Regulation II. 1819, are to be written [viz. 1 rupee,] the appeal must be considered as summary in as far as relates to the pleader's fees: but with reference to Section 12, the trial and decision should be regulated by the mode of procedure observed in regular appeals. [See Constructions 768 and 987, Nos. 19 and 23.] No. 338, 18th May 1821, ... I. 138

3. There is no provision in Regulations III., IV. and XIX. 1793, which could, *prima facie*, be construed as prohibiting a zumeendar from instituting one and the same suit for the recovery of the revenue of land exceeding 100 *beeghas*, held exempt from the payment of revenue, which may have been alienated by two or more grants prior to the 1st December 1790. Such suit should be entertained, leaving its legality and the plaintiff's right to be determined upon investigation of the facts of the case. No. 346, 3d August 1821, ... I. 142

4. A regular appeal lies, as a matter of right, from the decision passed by a zillah judge in a suit, upon which the collector has reported, as under Section 30, Regulation II. 1819. No. 427, 28th July 1826, ... I. 179

No. 455, 20th July 1827. ..... I. 192

5. Should it appear in appeal that the court of first instance has decided a suit which, under Section 30, Regulation II. 1819, should have been referred to the collector, for report, without making such reference, the appellate court should send back the case to the lower court, with directions to take a report from the collector and decide *de novo*. No. 427, 28th July 1826, ... I. 179

6. The reference to the collector being for report and not for decision, the case should be left on the judge's file, and on its being returned by the collector, the judge should proceed to try and decide it, as if no reference has been made. No. 450, 30th March 1827, ... I. 189

7. Appeals from the decisions of collectors in cases instituted before those officers in the first instance, should be considered as regular appeals, and entered in the monthly and annual statements as "appeals under Regulation II. 1819." No. 450, 30th March 1827, ... I. 189

8. The provisions of Clause 5, Section 10, Regulation III. 1828, are applicable only to appeals from the decision of the Board of Revenue; or in other words, only to appeals from decisions which affect the rights of Government; and not to those of the revenue authorities which declare land hitherto held on a rent-free tenure liable to assessment. No. 492, 9th January 1829, ... I. 209

9. The fact of a case being referred to a sudder ameen after having been reported on by the collector, was held to be a sufficient ground for the admission of a special appeal, with a view to determine the legality of the proceedings. No. 499, 27th March 1829, ... I. 213

10. The judge of Purneah was informed that all suits pending under Regulation II. 1819, should be retained on his file, as that district has not been placed under the jurisdiction of a special commissioner under Regulation III. 1828. No. 508, 23d May 1829. ..... I. 216

11. All suits in which *lakhiraj* land is in dispute are properly cognisable by the collectors, not those only in which Government is a party. No. 527, 30th October 1829, ... I. 224

12. The special commissioner of the Patna division was informed that, by Clause 1, Section 2, Regulation III. 1828, suits for the resumption of rent-free lands, in districts to which a commissioner had been appointed under that regulation, can only be finally determined by the commissioner: that by Clause 4 of the same Section, all pending suits are to be transferred to the commissioner, and no appeal shall lie to any established court of judicature from any decision which has been or may be passed by a Board of Revenue, or collector, previously to, or pending the appointment of a commissioner:—and that the Court of Sudder Dewanny Adawlut were precluded from admitting an appeal from a decree of the late third judge of the Patna provincial court in appeal from a decision of the Board of Revenue and collector; but that by Clause 6, Section 4 of the Regulation cited, the commissioner was authorized to admit the appeal; otherwise the party would be deprived of the right of appeal, which was open to him prior to the passing of the Regulation. No. 534, 1st January 1830, ... I. 226

13. In suits in which Government would not be entitled to any revenue from the land, if resumed, the petition of the plaint should be written on stamp paper of the value prescribed for rent-free lands, whether the claim be by an individual against a *zumeendar* to hold land on a rent-free tenure, or by a *zumeendar* to resume land held on an illegal rent-free tenure. No. 576, 1st October 1830,... I. 241

14. When a *zumeendar* sues to resume lands held on a rent-free tenure, the only question for the court to determine is the validity or otherwise of the alleged rent-free tenure, and not the amount assessable thereon. The decree, if in favor of the plaintiff,

should merely declare the land liable to assessment. No. 576, 1st October 1830, ... I. 241

15. When suits which involve the validity of titles to hold lands exempt from the payments of revenue have been tried by courts inferior to the zillah judge's court, without a previous reference to the collector, the decisions should be quashed and the suits placed on the judge's file and the prescribed reference made to the collector. No. 584, 25th February 1831, ... I. 245

16. As a sudder ameen cannot refer a suit to the collector for report, the judge cannot refer to the sudder ameen such suit when reported on, but must try it himself. No. 589, 8th April 1831, ... I. 246

17. The collector cannot delegate to his assistant the judicial duties delegated to him by the judge under Section 30, Regulation II. 1819. No. 603, 21st October 1831, ... I. 250

18. Suits in which rent-free lands are the subject of dispute, but in which the validity of the tenure is not disputed, should not be referred to the collector for report. No. 669, 13th January 1832, ... II. 32

19. In an appeal to set aside the decision of a collector under Section 27, Regulation II. 1819, the pleadings and other papers are liable to the stamp duties prescribed by Schedule B, Regulation X. 1829. No. 768, W. C. 15th March, C. C. 29th March 1833, ... II. 87

20. Suits for the property or possession of rent-free lands are not cognizable by moonsiffs, even though the point of the land being rent-free or exempt from the payment of revenue be not disputed by the parties. [*Superseded by Section 8, Act VI. 1843.*] No. 826, C. C. 6th September, W. C. 4th October 1833, ... II. 125

21. In suits for rent-free land, in which the right of ownership only is the point at issue, [as for instance, when the heirs of a holder of rent-free lands sue their co-parceners for their respective shares,] the case appertains solely to the civil court; but if the nature as well as the proprietory right be disputed, [as where the sunnendar sues for possession of land as attached to his estate and the defendant pleads that he holds possession thereof as rent-free, and *vice-versâ*,] the suit must be referred to the collector for report. No. 981, C. C. 16th September, W. C. 11th March 1836, ... II. 230

22. If the collector return a suit with his opinion, that it is not one on which he is bound to report, the judge, in the event of his maintaining a different opinion, should repeat the order, with the usual precept, requiring a return to be made within a prescribed period. Should the collector still refuse, the judge should report the matter for the Court's information, in order that such other measures should be adopted as might appear just and proper. No. 981, C. C. 16th September 1835, W. C. 11th March 1836, ... II. 230

23. Clause 7, Section 30, Regulation II. 1819, which allowed the petition of appeal from collectors' decisions to be written on a stamp of 1 rupee, is rescinded by Section 2, Regulation X. 1829; and the petition of appeal, the pleadings and exhibits must be written on stamps, as in other appeals. No. 987, C. C. 4th September, W. C. 25th September, Government 17th November 1835, ... II. 235

24. A suit brought by a sunnendar for the rent of land in which the defendant claims a right of property in virtue of a rent-free grant, is not referrible to the collector under Section 30, Regulation II. 1819; but must be considered as a boundary dispute, and disposed of in the ordinary manner by the civil court. No. 1067, C. C. 30th December 1836, W. C. 13th January 1837, ... II. 294

25. The rule contained in Clause 3, Section 16, Regulation V. 1831, applies only to appeals from the decisions of the native judges: consequently appeals from the decisions of collectors under Clause 7, Section 30, Regulation II. of 1819, cannot be confirmed summarily; the respondent must be duly summoned and security for costs tendered. No. 1076, C. C. 24th February, W. C. 10th February 1837. ... II. 299

26. When lands are attached by Government pending an enquiry as to the validity of the alleged rent-free tenure, if the lands be finally adjudged liable to assessment, Government are entitled to mesne profits during attachment. If on the other hand, the lands be declared to be exempt from public assessment, the proprietors have a just claim against Government for the mesne profits which accrued while the lands were under charge of the revenue authorities. No. 1079, C. C. 10th March 1837, II. 301

27. Should it be found that the collector, in a suit for rent-free land, has omitted to do any act which he is required to do by law, and has either forwarded his report according to Clause 6, Section 30, Regulation II. 1819, or has passed a decision under Clause 7, as the case may be, without such defect being remedied, thereby precluding the judge, who may decide, or hear in appeal, the case from proceeding with or adjudicating it in a legal manner; the latter officer would be authorized, and it would be his duty to return the proceedings, pointing out to the revenue officer his want of conformity to the law applicable to the case, and desiring him to rectify the error or supply the omission: and on his refusal the judge should bring his conduct to the notice of Government. No. 1245, C. C. 23d August, W. C. 13th September 1839, ... III. 63

28. Should a principal sudder ameen, in trying an appeal from the decision of a moonsiff, find that the matter at issue is of such a nature as to render a reference to the collector, under Section 30, Regulation II. 1819, necessary, he should send the case to the judge under the Circular Order, Sudder Dewanny Adawlut, 14th June 1839, recommending the annulment of the moonsiff's decision, and the return of the case to that officer, on the ground that he ought to have rejected the suit in the first instance, as illegally

instituted, and in order that he should now follow that course. No. 1261, C. C. 3d January 1840, W. C. 6th December 1839, ... III 68

RENT, SUITS FOR, ON ¼ STAMP.

1. Suits for arrears or exaction of rent on ¼ stamp, are cognizable as summary suits by the collector, and as regular suits by the moonsiffs; and the rule is applicable to ryots and under tenants resisting undue demands, and sumreendars and others claiming their just dues. No. 714, C. C. 31st August, W. C. 8th October 1832, ... II. 55

2. The civil courts are competent to receive suits for rent on ¼ stamp: it is not necessary that they should first be instituted before the collector as summary suits, and by him transferred to the civil court. No. 867, C. C. 14th February, W. C. 26th March 1834, ... II. 157

3. In suits for rent on ¼ stamp, the vakeel's full fee must be deposited *(but see Regulation XII. 1833)*; the pleadings must be filed; and all the forms enjoined for the conduct of regular suits must be observed. No. 930, C. C. 23d January, W. C. 27th February 1835, ... II. 200

4. Suits transferred by the collector to the civil courts must be entered and tried as regular civil suits. No. 951, W. C. 8th May, C. C. 22nd May 1835, ... II. 211

5. Summary suits made over by the collector to the civil court under Regulation VIII. 1831, in consequence of regular suits having been previously instituted relative to the same matter, must be numbered separately, and each decided as a distinct suit, though both decisions may be simultaneous No. 1001, C. C. 12th February, W. C. 4th March 1836, ... II. 247

6. The term "regarding the same matter" in Section 14, Regulation VIII. 1831, is to be considered as meaning that the cause of action in both suits is identical. No 1001, C. C. 12th February, W. C. 4th March 1836, ... II. 247

7. Suits instituted under Section 8, Regulation VIII. 1831, are to be considered in all respects as regular civil suits: consequently the pleadings and all other papers should be written on stampt or plain paper, according to the circumstances of the case, in the same manner as if the suit had been instituted on full stamp. No. 1001, C. C. 12th February, W. C. 4th March 1836, ... II. 247

RENT, SUMMARY SUITS AND PROCESS FOR.

1. Suits brought under Regulations XVII. 1793, XLV. 1795. VII. 1799, V. 1800, and XXVIII. 1803, should be considered as summary; but the defendant should be heard in his defence, and any evidence offered by him to refute the charge of resistance to attachment should be taken. No. 23, 9th August 1806, ... I. 7

No. 503, 1829, ... I. 215

2. Though the process of distraint was primarily intended to enable landholders and farmers to realize their rents for the current year with punctuality, the regulations do not restrict the process from being employed for arrears of a former year, provided the person upon whom the distress is levied continue to be an under tenant of the distrainer. No. 27, 1st February 1807, ... I. 7

3. The notice directed by Section 2, Regulation II. 1806, is not applicable to cases of summary suit provided by Section 15, Regulation VII. 1799. No. 30, 18th July 1807, ... I. 8

4. The regulations cited in Construction 23, regarding the powers of landholders to proceed against their tenants for arrears of rent being general, must be understood to apply to all claims for arrears of rent, whether due from lands paying revenue to Government or from lands exempt from public revenue. No. 33, 21st January 1808, ... I. 8

No. 61, 19th July 1810, ... I. 14

No. 313, 5th May 1820, ... I. 129

No. 337, 23d February 1821, ... I. 138

5. The regulations above cited are equally applicable to persons in possession of estates under deeds of mortgage, as to regular proprietors and farmers. No. 35, 26th May 1808, ... I. 9

6. The provisions of Section 15, Regulation VII. 1799, are equally applicable to defaulting tenants and their *malzamins*; but not to *kazirzamins*, unless the defaulters, for whose appearance they are responsible, abscond: in which case the *kazirzamin* as well as the *malzamin* is answerable for what may be due from the defaulter, and may be proceeded against accordingly. No. 41, 13th September 1808, ... I. 10

7. A defaulting farmer is liable to be ousted from his farm, at the end of the year for which an arrear of rent may be due from him, if he do not discharge the same on demand. No. 42, 17th September 1808, ... I. 10

8. A proprietor of land is authorized to oust his defaulting tenant without application to a court of justice, as declared in Clause 11, Section 15, Regulation VII. 1799, provided no violence be used so as to bring the case within the provisions of Regulation XLIX. 1793. No. 42, 17th September 1808, I. 10

9. The regulations do not authorise any summary process in cases of complaints by ryots and other under tenants against landholders or farmers for refusing to grant *pottahs* or receipts. But on the ryots establishing their claim to receipts or *pottahs* by regular suit, they would be entitled to receive them as well as damages. No. 67, 16th August 1810, ... I. 16

10. The summary enquiry provided by Section 15, Regulation VII. 1799, was not intended to be made *ex parte*, but on the arrest of the defaulter or his surety. [*Superseded by Clause 3, Section 18,*

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Regulation VIII. 1819, *which authorizes an exparte investigation.*] No. 96, 16th January 1812, ... I. 24

11. Plaintiffs in summary suits may prefer their claims in person or by vakeel, and are not required to prefer them on oath or solemn declaration. No. 110, 3d September 1812, ... I. 29

12. If on the *zumeendar's* alleging his tenant to be in arrear, the tenant deny the fact, the courts of justice are not authorized to cause the tenants to be removed and the tenure given up to the *zumeendar*, without any previous investigation of the latter's claim. The landholder must have recourse to his legal remedies of distraint, summary suit, or regular action. The 7th Clause of Section 15, Regulation VII. 1799, is merely declaratory of the right possessed by landholders, in common with all other claimants, to pursue their just demand by peaceable means; and intended not to convey to landholders any powers in addition to those which they previously possessed upon general principles and the usage of the country, but to give confidence to the landholders in the lawful pursuit of their just claims, and to discourage undue opposition on the part of the tenants—by satisfying the former, that they would be in no danger of being treated as wrong doers, in consequence of the just and peaceable exercise of their powers; and making the latter sensible that, in resisting rightful claims, until prosecuted in a court of justice, they would render themselves liable to costs and damages. No. 113, 12th November 1812, ... I. 30

13. When a summary judgment for rent is not satisfied by the defaulter or his surety, it may be enforced, at the expiration of the Bengallee, Fuslee, or Willaitee year for which the arrears have been adjudged to be due, by the sale of the defendant's *talook* or other transferable tenure, for the rent of which such judgment may have been passed. But the tenure cannot be sold on the mere allegation of a balance being due, without any enquiry. No. 128, 8th July 1813, ... I. 36

14. On the defaulter's tendering the amount decreed against him by a summary judgment, his tenure cannot be sold. The Court declined saying whether the *zumeendar* would be entitled to sell, in the event of his proving, by a regular suit, that the *talookdar* was in arrears at the end of the year. No. 130, 15th July 1813, ... I. 37

15. The provincial court may admit a special appeal in cases in which no regular appeal lies: therefore, they may admit an appeal from the judge's decision under Regulation VII. 1799. [*Obsolete*, but see Constructions 254 and 323.] No. 130, 15th July 1813, ... I. 37

15. A summary judgment for rent cannot be passed without the arrest of the under tenant or his surety; but a reasonable time should be allowed to the plaintiff to point them out. [*Superseded by Section* 18, *Regulation VIII.* 1819, *which authorizes an exparte enquiry, if the defendant be not forthcoming.*] No. 220, 31st August 1815, ... I. 71

17. There is no provision in the regulations for the arrest of the defaulter or his surety in any other jurisdiction than that in which the land is situated. [*This is provided for by Section* 9, *Regulation VIII.* 1819.] No. 220, 31st August 1815, ... I. 71

18. It is necessary for zumeendars and farmers prosecuting for enhanced rent, or defending suits instituted against them under Section 15, Regulation V. 1812, to shew that the amount demanded by them in the notification served on their tenants is conformable to the *pergunnah* rates, and the actual extent of the land. No. 234, 3d February 1816, ... I. 77

19. Summary suits for rent are not cognizable by sudder ameens or moonsiffs. No. 250, 22d May 1816, ... I. 85

No. 322, 4th August 1820, ... I. 132

No. 332, 22d December 1820, ... I. 135

20. If the summary judgment of the judge be within his competency, no appeal, regular or special, lies to the provincial court on the merits. But if it appear on the face of the summary judgment that the judge has exceeded his competency, the provincial court may admit an appeal to correct the irregularity without the expense and delay of a regular suit. [*Obsolete.*] No. 254, 31st July 1816, ... I. 88

No. 323, 11th August 1820, ... I. 132

21. The provisions of Section 15, Regulation V. 1812, by which a ryot may give security and release his attached crop from distraint by instituting a suit to contest the demand, applies also to cases in which a ryot may wish to give security to bring a suit, to contest the zumeendar's claim to enhanced rent under Sections 9 and 10 of the Regulation, and to attach his *jote* and oust him at the end of the year. No. 255, 21st August 1816, ... I. 88

22. A zillah judge is competent to depute an ameen to make local enquiries, when in a summary suit such a step may appear necessary. [*See Regulation VIII.* 1831.] No. 265, 19th February 1817, ... I. 92

23. A judge, on sufficient cause being shewn, is competent to re-admit a summary suit, which he may have dismissed in default of the plaintiff's attendance, without having called on him to shew cause for not having attended and proceeded in the suit. [*See Regulation VIII.* 1831.] No. 266, 19th February 1817, ... I. 93

24. The term "farmer of land," in Clause 4, Section 15, Regulation VII. 1799, is used in a general sense, and therefore includes under-farmers between the *sudder* farmer and the *ryot*, who may therefore avail themselves of the summary process prescribed by that Section. No. 278, 9th July 1817, ... I. 100

25. A register vested with full powers under Section 12, Regulation XXIV 1814, and residing at other than the sudder station of the district, may

admit defaulters and their sureties to bail, pending a summary suit for arrears of rent. [*Obsolete.*] No. 285. 4th February 1818, ?..... ?..... I. 107

26. In summary suits, in cases of illegal distraint, there should be adjuged to the injured tenant restitution of the value lost by him by the illegal distraint, and as much again as damages. Section 17, Regulation V. 1812, which allows the tenant his remedy by a summary suit, which before was confined to a regular suit, does not alter the quantum of remedy to be afforded to him. No. 327, 1st September 1820, I. 134

27. Individuals other than the alleged defaulter and his surety, who may lay claim to distrained property, are not entitled to the release thereof on furnishing security: nor can their claims be investigated under the provisions of Section 15, Regulation V. 1812; but such claims must be investigated as regular suits under Section 9, Regulation VII. 1799, No. 348, 19th April 1822, ... I. 144

28. The omission on the part of the alleged defaulter or his surety to give security, in consequence of which his property is sold, does not deprive him of his summary action. No. 348, 19th April 1822,... I. 144

29. The existence of a *kubooluut*, or written engagement on the part of the ryot, is not essentially necessary to enable the landholder to institute a summary action against him; but the courts may decree such arrears as may be proved to be *bonâ fide* and actually due by an examination of the vouchers and accounts of the parties. [*See also Construction* 374.] No. 380, 15th April 1825, ... I. 157

30. The omission on the part of the alleged defaulter and his surety, after having given security, to institute a suit within the prescribed period, though it subjects the property to re-attachment and sale, does not deprive them of the benefit of a summary action for the recovery of damages on account of injury sustained by the illicit sale of the property. No. 421, 2d June 1826, ... I. 177

31. A suit by a ryot, farmer, or dependent talookdar, under the provisions of Section 17, Regulation V. 1812, should be instituted within one year from the date of the injury sustained by the illegal sale. No. 457, 25th January 1828, ... I. 198

32. The summary process authorized by Regulation VII. 1799, may be resorted to, however small may be the arrear claimed. No. 519, 21st August 1829, ... I. 221

33. To authorise the distraint of the ryot's property for arrears, it is not absolutely necessary that the zumindar should produce a *kubooluut* executed by the ryot. No. 574, 17th September 1830, I. 240

34. The provincial court are competent to reverse an order passed by a judge in a summary suit instituted under Regulation V. 1812, with a view to direct the judge to conform to the provisions thereof. [*Obsolete.*] No. 581, 31st December 1830, ... I. 244

35. The summary decrees of collectors under Regulation VIII 1831, are to be executed by themselves and not by the judges. No. 677, 24th February 1832, ... II. 34

36. Suits connected with arrears or exactions of rent, whether instituted by ryots, or under-tenants resisting undue demands, or by zumeendars and others claiming their just dues, may be tried either as summary suits by the collector, or as regular suits by the moonsiffs on stampt paper of ¼ a value. No. 714, C. C 31st August, W. C. 6th October 1832,... II. 55

37. The moonsiff or other competent officer called upon to sell distrained property is entitled to be reimbursed his expenses actually and necessarily incurred, though no sale take place; and if such expenses be not paid, he is authorized to realize the same by such part of the attached property as may be necessary for the purpose. [*But see Act I. of* 1839, *and Construction* 1255, *infra.*] No. 714, C. C. 31st August, W. C. 5th October 1832, ... II. 55

38. The judge cannot stay execution of the summary award of the collector, pending a civil suit to set aside that award. No. 738, W. C. 16th November, C. C. 7th December 1832, ... II. 67

No. 1165, C. C. 17th August, W. C. 20th July 1838, ... III. 23

39. Summary suits for the rent of lakheraje lands are cognisable by the collector under Regulation VIII. 1831. No. 837, W. C. 11th October, C. C. 8th November 1833, ... II. 131

40. A summary suit will not be against all the defaulters of a village collectively, they not being connected with each other otherwise than by dwelling in the same village. No. 860, W. C. 7th February, C. C. 28th February 1834, ... II. 154

41. The collector cannot refer summary suits to the moonsiffs to be tried as regular suits. No. 879, C. C. 11th April, W. C. 2nd May 1834, ... II. 168

42. Summary suits by mulgoozars against putwarees and other native agents employed by them in the management of their estates, under Section 37, Regulation XXVIII. 1803. (Section 20, Regulation VII. 1799,) are now cognisable by the collector. No. 946, W. C. 24th April, C. C. 22nd May 1835, ... II. 208

43. Summary suits transferred by the collector to the civil court under Section 15, Regulation VIII. 1831, are to be entered and tried as regular suits. No. 951, W. C. 8th May, C. C. 22nd May 1835, II. 211

44. The period of one year allowed for bringing a suit to set aside the summary award of a collector, must be calculated according to the principle laid down in Clauses 10 and 11, Section 8, Regulation XXVI. 1814. No. 1028, C. C. 29th July, W. C. 19th August 1836, ... II. 268

45. The civil court may stay the sale of property about to be sold in execution of the collector's summary award, on the motion of a *third* party, who, claiming it, has instituted a regular suit to establish his claim. No. 1181, C. and W. C. 26th October, 1838,..... III. 32

46. The power to receive security in cases of distraint for arrears of rent, which was conferred on the moonsiffs under Section 16, Regulation V. 1812, in virtue of their office as commissioners for the sale of distrained property, necessarily ceases with the withdrawal of the commission under the operation of Act I. 1839. No. 1255, C. C. 18th October, W. C. 22d November 1839, ... III. 66

47. The following constructions relate to the reference of summary suits to collectors, and have become obsolete since the enactment of Regulation VIII. 1831, which gives the collector original jurisdiction in such matters.

No. 108, 23d July 1812, ... I. 29
No. 112, 23d October 1812, ... I. 30
No. 116, 24th December 1812, ... I 34
No. 126, 29th April 1813, ... I. 36
No. 165, 9th June 1814, ... I. 51
No 166, 9th June 1814, ... I. 51
No. 203, 18th May 1815, ... I. 64
No. 268. 5th March 1817, ... I. 94
No. 425, 14th July 1826, ... I. 178
No. 599, 12th August 1831, ... I. 249

REPAIR OF ROADS.

1. A magistrate cannot compel a landholder to repair the public roads passing through his estate. No. 1072, W. C. 3d February, C. C. 3d March 1837, ... II. 297

REQUESTS, COURT OF.

See "Calcutta," No. 3.

RESCUE.

See "Arrest," No. 1.

RESISTANCE OF PROCESS.

1. Registers are competent to proceed against persons charged with resistance of process issued by them in suits referred to them, subject to an appeal to the judge: and as the judge may recall suits from the register, he may recall that which includes the resistance. [*Obsolete.*] No. 251, 29th May 1816, ... I. 85

2. A collector is competent to try all cases of resistance of his process of attachment connected with summary suits for rent, except where actual breaches of the peace occur, in which event the case must be tried by the magistrate. No. 615, 23d December 1831, ... I. 254

3. In cases of resistance of a moonsiff's process, he should report the case for the orders of the judge, as required in the instances provided for in Sections 23, 31, and 42, Regulation XXIII. 1814. [*See note on No.* 8.] No. 701, C. C. 6th July, W. C., 7th August and 26th October 1832, ... II. 46

4. A judge should himself dispose of all common cases of resistance of civil process under Section 25, Regulation IV. 1793, and make over to the magistrate those cases only which may have been attended with acts of violence amounting to a breach of the peace. No. 1032, C. and W. C. 12th August 1836, ... II. 272

No. 1116, W. C. 24th November, C. C. 8th December 1837, ... II. 329

5. An assistant in charge of the judge's office may summon parties charged with resistance of civil process, and examine the witnesses for and against the prosecutors, and, if he consider the charge proved, hold the offenders to bail until the arrival of the judge, who, under the provisions of Section 3, Regulation IX. 1793, will pass the final order. No. 1090, C. C. 16th March, W. C. 31st March 1837, ... II. 302

6 When the judge of one sillah is called upon to aid the process of another sillah, he should back the same with his official signature, and send one or more peons of his own court to aid in the execution. Should that process be resisted, it will be considered as a resistance of the process of the court within whose jurisdiction it took place, and be cognizable as such by the judge of that court. No. 1115, W. C. 24th November, C. C. 8th December 1837, ... II. 329

7. A person against whom a summons has been issued to defend himself against a charge of resistance of process, is at liberty to answer the charge through a vakeel without attending in person. No. 1216, W. C. 17th May, C. C. 7th June 1839, ... III. 53

8. A moonsiff is competent to ascertain the fact of resistance of a process of his court, or other contempt, and to determine the amount of fine which ought to be levied on the offender: but before proceeding to levy the fine, he should report the case for the orders of the judge. [*Moonsiffs are empowered by Section 4, Act I. 1843, to levy fines without reference to the judge.*] No. 1262, W. C. 16th November 1839, C. C. 3d January 1840, ... III. 69

See "Forfeiture of Land," Nos. 7, 8, 9.

RE-TRIAL, SUITS SENT BACK FOR.

1. Should it appear in appeal that the court of first instance has decided a suit which, under Section 30, Regulation II. 1819, should have been referred to the collector for report, without making such reference, the appellate court should send back the case to the lower court with directions to take a report from the collector and decide *de novo*. No. 427, 28th July 1826, ... I. 179

2. An original suit decided by the provincial court, being in appeal sent back for re-trial, after the promulgation of Regulation II. 1833, the provincial court were directed to transfer it as an original undecided suit to the sillah judge. No. 793, C. C. 31st May, W. C. 29th June 1833, ... II. 103

3. The vakeels in a suit which in appeal was sent back for re-trial, having received the full fee, the Court directed that the parties should be required to deposit another full fee—the court finally deciding the case determining to which party the fees already paid should be charged [*Superseded by Construction*, 1105, *No.* 8.] No. 840, 11th October 1833, II. 134

4. The rules contained in Section 18, Regulation IV. 1808, (Section 18, Regulation IV. 1793,) must be considered applicable to the judges of districts under Regulation V. 1831, consequently they may send back cases for re-trial to the native judges. No. 870, W. C. 21st February, C. C. 27th March 1834,..... II. 159

5. A principal sudder ameen is competent to send a case to a moonsiff for further investigation; but cannot direct him to retry it: should he deem a new trial necessary, he must report his opinion on this point to the judge. No. 1023, C. C., 8th July, W. C. 5th August 1836, ... II. 264

6. A principal sudder ameen trying a suit sent back by the Sudder Dewanny Adawlut for re-trial is competent to adjudge the costs of all the courts in such manner as may appear just, his order being of course open to appeal. No. 1037, C. C. 12th August, W. C. 2d September 1836,..... II. 275

7. When a suit is sent back for re-trial, unless the order specially restricts the enquiry to any particular point or points, the whole case must be considered as re-opened. No. 1073, C. C. 10th February, W. C. 24th February 1837,..... II. 297

8. On a suit being sent back for re-trial, the vakeels who had taken out of court, on the decision of the case, the fees deposited by the parties, should be ordered to refund the same; leaving the court which may decide the case to award to the vakeels such portion of the fee as may appear an adequate remuneration for the trouble which they had taken in the matter. No. 1105, W. C. 8th September, C. C. 29th September 1837, ... II. 320

REVIEW OF JUDGMENT.

1. It has been held that the spirit of Clause 2, Section 4, Regulation XXVI. 1814, is applicable to miscellaneous cases and summary suits as well as to regular suits. No. 216, 27th July 1815, ... I. 69

No. 1249, C. C. 13th September, W. C. 4th October 1839, ... III. 64

2. The decision of the register of a zillah or city court is not open to review. No. 216, 27th July 1815, ... I. 69

No. 810, C. C. 22d August, W. C. 20th September 1833, ... II. 115

3. The provincial court were allowed to review two decisions passed by them in appeal from the summary decision of a zillah judge under Regulations VII. 1799 and XLIX. 1793. No. 265, 19th February 1817, ... I. 92

No. 266, 19th February 1817, ... I. 93

4. The 3d judge of the provincial court having made the sons of one respondent answerable for the costs of suit in a case decided by two former judges, his order was considered of equal validity as if it had been passed by two or more judges, and not alterable without the permission of the Sudder Dewanny Adawlut to review. No. 280, 28th August 1817, ... I. 102

5. Although a petition of review may be received on the full stamp after the expiration of three months from the date of the decree, it is not incumbent on the court to receive it, unless the applicant shew just and reasonable ground for not having preferred it within the prescribed period. No. 490, 15th December 1828, ... I. 206

6. If the zillah judge dismissed the suit of the plaintiff on the strength of a decree of the provincial court, and the latter decree should afterwards be reversed by the Sudder Dewanny Adawlut, this would be a good ground for the zillah judge to apply for permission to review his judgment, and the Sudder Dewanny Adawlut would grant it. Had the plaintiff's claim been dismissed by a sudder ameen on the strength of a decree of the zillah judge, subsequently reversed by the provincial court, the plaintiff might apply for a summary appeal under Section 3, Regulation XXVI. 1814, as from a dismissal without an investigation of the merits of the case; or had he preferred a regular appeal, the fact stated would have been sufficient to authorise the admission of it, notwithstanding the expiration of the period allowed by the regulations. No. 551, 7th May 1830, ... I. 233

7. The decision of a single judge of the Sudder Dewanny Adawlut on review of a judgment passed by himself and another judge, the review having been admitted by both deciding judges, one of whom left the court before the re-hearing of the review, is final and conclusive, in the event of his confirming the former judgment No. 683, 16th March 1832, ... II. 38

8. On an application being presented for a review of judgment in a case decided by two judges of the Sudder Dewanny Adawlut both of whom continue attached to the court, it is to be laid before the judges who passed the decree. In the event of a difference of opinion between them, as to the admission or rejection of the review, the matter to be referred for the opinion of a third judge till the question be decided by a majority of voices. No. 756, C. C. 8th February, W. C. 15th March 1833, II. 81

9. Petitions for review of orders of the Sudder Dewanny Adawlut rejecting applications for a review of judgment, provided they are presented within three calendar months from the delivery or tender of the decree appealed against, may be written on stampt paper of the value of two rupees; but if preferred after the expiration of that period, all such petitions must be written on the stampt paper prescribed in Article 8, Schedule B, Regulation X. 1829, with reference to

the amount or value of the property adjudged against the party desiring the review; in like manner as if a regular appeal were preferred from such judgment, as required by Clause 1, Section 2, Regulation II. 1825. No. 843, C. C. 1st November, W. C. 29th November 1833, ... II. 137

10. When in a case decided by a single judge of the Sudder Dewanny Adawlut the deciding judge shall have rejected an application for a review of the judgment, his rejection as to all intents and purposes final; unless he himself shall see grounds, on a subsequent application, to admit a review; and is not competent to any other judge or judges of the court, at any subsequent period, to authorise a review of the order rejecting the review. No. 982, 16th October 1835, ... II 230

11. When the Sudder Dewanny Adawlut has rejected a petition of special appeal from the decision of the zillah or city judge in appeal from the original decision of a principal sudder ameen, as no appeal has been admitted from the judge's decision, he may apply for permission to review it. But when the Sudder Dewanny Adawlut has summarily confirmed the original decision of the zillah or city judge without summoning the respondent, the order is to all intents and purposes a judgment of the Sudder Dewanny Adawlut and open to review by that Court alone. No. 1057, C. C. 11th November, W. C. 25th November 1806, II. 287

12. Documents filed with applications for a review of judgment under the provisions of Section 4, Regulation XXVI. 1814, are considered as exhibits, and liable as such to the rule contained in Article 5, Schedule B, Regulation X. 1829, in the same manner as if they had been filed or entered on the proceedings of the original suit, or when it was before the court on appeal, whether regular or special. No. 1058, C. C. 18th November, W. C. 21st October 1830, ... II. 287

13. A judgment passed by an additional judge, while he officiated as judge of the district, is to be reviewed by him, if still attached to the district, and not by the judge. No. 1123, C. and W. C. 29th December 1837, ... III. 1

14. A party whose petition of review has been rejected by the lower court is not entitled to a deduction of the period during which his application was pending in the lower court, in calculating the period allowed for preferring a regular appeal from the original decision. The appellate court should however consider the plea, if urged as a cause of delay, and admit it or not as under all the circumstances of the case may appear just and proper. No. 1127, W. and C. C. 2d February 1838, ... III. 2

15. It is not competent to a zillah judge to re-admit a petition of special appeal which has been once struck off the file for any reason, without obtaining the sanction of the Sudder Dewanny Adawlut. No. 1171, C. C. 7th September, W. C. 10th August 1838, ... III. 27

16. When a zillah judge has rejected a petition to sue *in forma pauperis*, he is not competent of his own authority to admit a second application from the same party and on the same matter: but must treat the second application as a petition of review of his first order and proceed accordingly. No. 1229, W. C. 5th July, C. C. 2d August 1839, ... III. 57

17. The order of a zillah judge dismissing a suit on default, or without investigation of the merits, is open to review. No. 1269, W. C. 3d January, C. C. 7th February 1840, ... III. 70

18. The order of a zillah judge dissenting from a principal sudder ameen, as to the propriety of a review of the latter's judgment, on a reference under Clause 2, Section 19, Regulation V. 1831, is final and not open to revision on appeal to the Sudder Dewanny Adawlut. No. 1294, C. C. 14th May, W. C. 28th July 1841, ... III. 39

19. A case having been remanded for irregularity without trial of its merits, either party desirous of a review of that order, after the expiration of three months, must move the court by a petition written on a stamp of the full value for pettions of plaint. No. 1375, W. C. 31st January, C. C. 24th February, 1843, ... III. 102

REWARDS.

1. A police daroghs is equally entitled with others to the reward given on the conviction of illicit manufacturers or sellers of spirituous liquors, &c. No. 43, 10th November 1808, ... I. 11

2. Though the rule contained in Section 16, Regulation XVI. 1810, does not expressly provide for the case of a convict escaping from custody, the Nizamut Adawlut are of opinion that under the general tenor of the rule, and with reference to the further provision in Section 18, the court of circuit are competent to authorise a reward to the extent specified in the cases referred to. No. 229, 30th November 1815, ... I. 76

3. Individuals, not being police officers, are not entitled to the commission allowed to police officers on the recovery of stolen property; but the magistrate may reward them for any eminent service rendered to the police, the necessary sanction being obtained from the proper authority. No. 381, 22d April, 1825, ... I. 158

4. A magistrate may recommend to the superintendent of police, for reward, a police cotwal who in searching certain houses found 26,000 rupees, but the cotwal would not be entitled to the percentage prescribed by Clause 17, Section 16, Regulation XX. 1817. No. 511, 19th June 1829, ... I. 217

5. A session judge may sanction a reward for meritorious services, and also direct the distribution of the percentage on the recovery of stolen property, authorized by Clause 17, Section 16, Regulation XX.

1817. No. 727. C. C. 26th October, W. C. 7th December 1832, ... II. 61
No. 1156, C. and W. C.s 9th March 1838, III. 7

RYOTS.

1. The Sudder Dewanny Adawlut declined defining the extent of power of "compelling the attendance of ryots," conferred on zumeendars under Section 15, Regulation VII. 1799, and observed that on a complaint being preferred to the magistrate, it would be for him to decide whether any unnecessary or unauthorised degree of severity had been resorted to. No. 382, 22d April 1825, ... I. 158

2. An indigo planter, not being a zumeendar, has no power to summon ryots and compel their attendance. No. 394, 17th June 1825, ... I. 165

SALARY OF MILITARY OFFICERS.

See "Military Cantonments, Courts, &c Civil," No. 5.

SALARY OF MOONSIFFS

See "Moonsiff, VI" No 6.

SALARY OF PUBLIC OFFICERS

See "Native Officers," No 27

SALE

See "Execution of Decrees, IV" *passim*

SALT

1. The object of Clause 6, Section 7, Regulation VI. 1801, in requiring a report to be made to Government, was ultimately to afford relief to persons who might be prosecuted for the illicit manufacture of salt, but not to preclude such persons from appealing from the sallah judge to the Superior Court. No. 6, 27th July 1805, ... I. 3

2. Suits instituted in conformity with Section 32, Regulation VI. 1801, for the recovery of fines for the illicit manufacture, &c. of salt, must be received and tried as regular suits and the plaint drawn up on the full stamp. [*But see Sections 30 to 35, Regulation X. 1819 and Act XXIX. 1838.*] No. 224, 21st September 1815, ... I. 74

3. Only one fine of 5000 rupees can be levied under Clause 1, Section 7, Regulation VI. 1801, whatever be the number of killaees within the same estate. [*Superseded by Section 31, Regulation X. 1819, which imposes a fine not exceeding 500 rupees for each killaee.*] No. 296, 24th September 1818, ... I. 118

4. Fines leviable under Section 12, Regulation I. 1824, for illicitly cultivating salt *chaur*, if not paid, should be commuted to imprisonment under the rules contained in Section 3, Regulation XIV. 1797, and Section 19, Regulation IX. 1807. No. 388, 3d June 1826, ... I. 160

5. The fine imposed by Section 37, Regulation X. 1819, should be in proportion to the quantity of illicit salt seized, and not according to the number of persons engaged in the illicit transaction. No. 471, 22d February 1828, ... I. 200

6. The provisions of Section 39, Regulation IX 1808, which declare native officers of the custom department, subject for extortion to imprisonment, fine, and corporal punishment, are not applicable to native officers of the salt department, who however are of course amenable for acts of extortion under the general regulations. No. 476, 8th April 1828, I. 202

7. In cases forwarded by salt officers to the judge under Section 113, Regulation X. 1819, the accused is at liberty to employ a vakeel and put in a written defence, if he deem that course preferable to pleading personally: and such written defence should be on the stampt paper of the value prescribed for miscellaneous petitions presented in the judge's court. No. 483, 23d May 1828, ... I. 205

8. Regulation X. 1819 apparently does not provide for cases wherein the defendants are absent, or against whom the agent has recorded his opinion of "guilty" exparte, its provisions being confined to an indication of the course of proceeding to be followed by the judge when the person of the defendant is produced: it is however the duty of the judge to afford his aid to apprehend any offender who has evaded or resisted the agent's process. No. 483, 23d May 1828, ... I. 205

9. Section 104, Regulation X. 1819 gives the agent the same powers for the apprehension of those charged with offences against the regulation, as the magistrates are authorized to use. No. 483, 23d May 1828, ... I. 205

10. The point ruled in Construction 471 was again ruled in regard to the penalty for illicit dealing in opium. No. 494, 20th February 1829, ... I. 210

11. Sections 36 and 41, Regulation X. 1819, clearly recognize a *chullaun*, granted for a portion of a lot of salt for which a *rowannah* may have been taken out, as an instrument equally valid as a rowanneh to protect the salt covered by it from confiscation. A different construction would warrant the confiscation of a boat laden with salt, the owner of which, trusting to the validity of the *chullaun*, might have hired it without any design to aid in a smuggling transaction. Nor can this construction enable the holder of a *rowannah* to transport a greater quantity of salt under its cover than the quantity specified in it; as an endorsement on the *rowannah*, shewing the quantity of each portion of the lot described in it,

for which a *chuddaur* may be granted, is all that is *required to prevent its serving to protect more than* the portion remaining entitled to its protection. No. 638, 12th August 1831, ... II. 16

12. The fines imposed for a breach of the salt laws are commutable to a term of imprisonment. If the fine be paid before the defendant is committed to jail, the case is concluded: if forthcoming after confinement, the case is also disposed of, and the prisoner must be released. If the fine be not paid, the person fined must undergo the prescribed period of imprisonment in commutation, and the levy of fine is then barred: i. e. the fine is not demandable after the imprisonment has been undergone, and the party released. [See Construction 1374, No. 14.] No. 1135, C. and W. C. 2d March 1839, ... III. 7

13. Scraping a salt chur, with a view to collect salt earth, is not an offence punishable under the provisions of Section 2, Regulation X. 1826. No. 1211, W. C. 19th April, C. C. 10th May 1839, ... III. 50

14. Fines not exceeding 50 rupees must be made commutable by imprisonment, and the orders executed by the confinement of the individual for the prescribed period, unless the fine be paid in the interim, when the party is entitled to his discharge. If the fine exceed 50 rupees but be less than 100 rupees, and the order contain no provision for commuting the same to imprisonment in default of payment, the judge must proceed to realise the fine exactly in the same manner he would do in execution of a decree of his own court of the same amount as the fine imposed, taking care that the term of imprisonment in no case exceeds the scale laid down in Section 110, Regulation X. 1819. No 1374, C. C. 27th January, W. C. 17th February 1843, ... III. 102

SECOND SUIT, INSTITUTION OF.

1. A judge on proof furnished by the records of his own office of the institution of a prior suit by A, is competent to dismiss a suit instituted by B, for the same cause of action, without issuing notice on A to appear and answer thereto. No. 999, C. C. 8th January, W. C. 5th February 1836, ... II. 244

SECURITY BONDS.

See "Stamps, VII." *passim.*

SECURITY FOR ATTENDANCE.

See "Bail," *passim.*

SECURITY FOR COSTS.

See "Appeals, V." Nos. 1, 4, 7.
See "Original Suits, II." No. 13.

SECURITY FOR DEBT.

A surety is competent to alienate property of which in the security bond he calls himself the proprietor, but which is not specifically pledged as security for the debt. No. 1017, C. C. 24th June, W. C. 15th July 1836, ... II. 261

See "Stamps, II." Nos. 6, 9, 15, 17, 18.

SECURITY IN APPEALS TO THE KING IN COUNCIL.

See "Appeals to the King in Council," Nos. 2, 3, 5.

SECURITY FOR GOOD CONDUCT.

1 In cases of the nature mentioned in Section 2, Regulation VII. 1811, the darogha is not authorized to apprehend the accused until he have made the enquiry directed by that section: the "evidence" which he is required to send to the magistrate is the *written evidence*, the witnesses being bound by recognizances to attend before the magistrate on a specific date. No. 149, 31st March 1814, ... I. 47

2. Suspected persons detained by the magistrate on requisition of security may be employed to work on the roads. No. 160, 20th May 1814, ... I. 49

3. A judge of circuit cannot alter or modify the order of a former judge fixing the amount of security to be furnished by a prisoner. [*Superseded by Clause 2, Section 10, Regulation VIII. 1818.*] No. 173, 27th July 1814, ... I. 53

4. In all cases wherein an order may have been passed by the Nizamut Adawlut or court of circuit, directing the magistrate to hold a prisoner to security to be approved by the court of circuit, the magistrate should fix the amount as he may deem proper, reporting the same for the consideration and orders of the court of circuit. No. 236, 9th February 1816, I. 79

5. The period fixed for the detention of a prisoner from whom security has been required should correspond with the period for which the surety is required to be responsible. No. 347, 29th March 1822, ... I. 143

6. When a case is brought before a judge of circuit by petition from a security prisoner, there is no discretion to enhance the period of detention. No. 347, 29th March 1822, ... I. 143

7. A person sentenced by a magistrate to imprisonment in default of furnishing security has no appeal to the court collectively: the cognizance of his case lies with the individual judge who may visit the station at which he is confined. [*Superseded by Construction* 458, No. 9.] No. 390, 10th June 1825, I. 161

8. The revision of the judge of circuit is not restricted to cases in which the magistrate has passed orders for security since the sessions immediately preceding; but he may call for and revise, with or

without petition, any case of any security prisoner relative to which the preceding judge may not have already recorded an order. [*But see Section 5, Act XXXI. of* 1841.] No. 458, 31st August 1827, ... I. 193

9. A person sentenced by the magistrate to furnish security has an appeal to the court collectively, and the cognizance of his case does *not* solely rest with the judge visiting the station where he may be confined. No. 458, 31st August 1827, ... I. 193

10. A judge of circuit holding the sessions may call for the magistrate's proceedings connected with a requisition of security, without petition, and singly pass such orders thereon as may appear just and proper; but, when he has concluded the jail delivery and despatched his report thereon to the Nizamut Adawlut, he cannot singly release a prisoner, but may record his opinion as a single judge of circuit, and refer the matter to the court at large. No. 460, 31st August 1827. [*See Section 5, Act XXXI.* 1841.] ..... I. 194

11. An individual, who has furnished the required security, may appeal to the court of circuit at the sudder station, or to the judge on circuit, who, however, cannot reverse or alter the magistrate's order without obtaining the concurrence of one of his colleagues. No. 460, 31st August 1827, ... I. 194

12. A judge on circuit is competent to call for the proceedings in the case of a prisoner detained on requisition of security, although such prisoner may not have presented any petition for two or three sessions after the order for his confinement. [*See Section 5, Act XXXI. of* 1841.] No. 460, 31st August 1827, ... I. 194

13. The magistrate's proceedings should be laid before the judge on circuit at the next ensuing sessions in all cases in which he may demand security for a period exceeding 12 months. No. 517, 7th August 1829, ... I. 220

14. An assistant vested with special powers under Section 2, Regulation III. 1821, cannot demand security for good conduct from a prisoner sent in by a daroghа under Section 2, Regulation XX. 1817, or commence an enquiry into the character of a prisoner made over to him for trial on a specific charge. No. 548, 23d April 1830..... I. 231

15. The penalty of a security bond for good conduct should be enforced by the magistrate according to the same rules and by the same process observed by civil courts in enforcing payment of money adjudged to be due by a decree. No. 734, 9th November 1832, ... II. 64

16. A session judge having arrived at the conclusion that the acquitted prisoners were notorious robbers of desperate and dangerous character, is competent to demand from them security for their future good behaviour, or in default thereof to have them detained in confinement. No. 771, 22d March 1833, ... II. 88

No. 823, C. C. 30th August, W. C. 4th October 1833, ... II. 124

17. Security prisoners cannot be exempted from labor by the payment of a fine. No. 881, C. C. 18th April, W. C. 16th May 1834, ... II. 169

18. Distance, or residence in another district, forms no grounds for the rejection of the security of a person tendered by a prisoner under orders to give security for good conduct. No. 920, 5th December 1834, ... II. 194

19. Construction 823 decides the question of the competency of a session judge to call for security from any one acquitted by him of the specific charge on which he may have been tried: he is equally competent to direct an investigation into character as a preliminary to the call for security. No. 1180, C. and W. C. 19th October 1838, ... III. 32

20. It is not competent to a court of sessions to add a demand of security to a specific sentence passed on a prisoner committed for trial, or to whom a specific punishment has been adjudged on a regular trial by a magistrate. No. 1195, W. C. 16th December 1836, C. C. 17th March 1837, ... III. 41

21. The removal of prisoners confined in a criminal jail on a requisition of security for good conduct, to another district, for the purpose of being induced to give evidence as approvers before the commissioners appointed for suppressing dacoitee, is illegal; though, if such prisoners have no objection to be removed to the jail of another district for the sake of giving evidence, the Court of Nizamut Adawlut may sanction their removal. No. 1240, W. C. 2d August, C. C. 30th August 1836,... III. 60

SECURITY FOR STAYING EXECUTION OF DECREES.

See "Execution of Decrees, III." *passim.*

SECURITY OF DEFENDANTS.

1. The order of a judge refusing to take security from a defendant who is said to be about to abscond, is open to appeal to the Sudder Dewanny Adawlut. No. 963, C. C. 26th June, W. C. 31st July 1835, ... II. 219

See "Attachment," Nos. 6, 14, 17, 20, 21.

SECURITY OF PAUPERS.

See "Paupers," Nos. 4, 10, 14, 18, 19.

SECURITY TO KEEP THE PEACE.

See "Moochulka," *passim.*

SERVANTS.

See "Workmen and Servants," *passim.*

SESSION JUDGES.

1. A session judge cannot try the case of a prisoner on a charge for which he as magistrate had committed other persons for trial. No. 685, 13th April 1832, II. 39

2. A session judge cannot try a commitment made by himself as civil judge. No. 691, W. C. 11th May, C. C. 1st June 1832,..... II. 43

3. A session judge may sanction rewards for meritorious services, and order the distribution of the commission on the value of stolen property recovered. No. 727, C. C. 26th October, W. C. 7th December 1832,..... II. 61

4. A session judge having come to the conclusion that an acquitted prisoner is a notorious robber, of dangerous and desperate character, is competent to require him to furnish security for his future good conduct, or in default to order him to be detained in custody. No. 771, 23d March 1833,..... II. 88

No. 823, C. C. 30th August, W. C. 4th October 1833,..... II. 124

5. A session judge is competent to dispose of the cases of insane prisoners agreeably to the rules contained in para. 4, Circular Order, Nizamut Adawlut, 11th February 1825. No. 822, C. C. 30th August, W. C. 20th September 1833, ... II. 123

6. A session judge may fine a mohurrir of the magistrate's court, for negligence and disrespect while attending on him during the criminal sessions. No. 882, C. C. 18th April, W. C. 16th May 1834, II. 169

7. The power of a session judge to fine, is unrestricted, as to amount, except when it is defined by any specific regulation, [as in the case of *dharna* by Regulation VII. 1820]. No. 959, C. C. 19th June 1835,..... II. 217

8. A session judge is competent to try a prisoner, committed under directions issued by him as civil judge, for any criminal act not being forgery or perjury. No. 975, C. C. 7th August 1835, ... II. 226

9. A session judge is competent to direct the re-apprehension of a person charged with a criminal offence, who may have been acquitted by the magistrate, and sentence him to punishment after hearing his defence. [*Superseded by Act XXXI.* 1841.] No. 986, W. C. 6th November, C. C. 4th December 1835, ... II. 234

10. It is the duty of the session judge to send for any case, the order passed in which may appear to him, on a revision of the monthly statements of the magistrate, to be of questionable propriety. [*But see Act XXXI. of* 1841.] No. 986, W. C. 6th November, C. C. 4th December 1835,..... II. 234

11. It is competent to a session judge, in his appellate capacity, to call on the magistrate to submit an English report of any case that he may think proper. No. 1071, W. C. 3d February, C. C. 3d March 1837, ... II. 296

12. A session judge cannot order a magistrate not to issue orders to the police to apprehend a released convict. No. 1100, C. C. 21st July, W. C. 25th August 1837, ... II. 317

13. A session judge has no power to receive evidence, which has not been previously heard before the lower court, except in such cases as have been regularly committed to him for trial at the sessions: if in revising a case included in the magistrate's abstract, further investigation appear to him necessary, he should direct the magistrate to make it and communicate the result to him. No. 1104, C. and W. C. 1st September 1837, ... II. 320

No. 1169, C. C. 31st August 1838, ... III. 26

14. The power of hearing appeals from the jailor and other subordinate officers of the jail, is, by Section 7, Act XXIV. 1837, vested in the session judge. No. 1142, C. and W. C. 23d March 1838,... III. 10

15. The magistrate's proceedings regarding the escape of convicts should be submitted to the session judge under the provisions of Clause 1, Section 14, Regulation XVII. 1816: but agreeably to Clause 2 of that Section, the escape should be reported to the superintendent of police, and measures for their apprehension should be taken by the magistrate in communication with that authority. By Section 7, the superintendent of police cannot exercise any authority over the guards of prisoners effecting their escape. No. 1162, C. and W. C. 3d August 1838, ... III. 20

16. It is competent to a session judge, on sufficient grounds, to order the magistrate to replace on his file a case struck off by him on default. No. 1169, C. C. 31st August 1838, ... III. 26

17. When a session judge has acquitted a prisoner of the specific charge on which he was tried, he is competent to direct an enquiry into his character as a preliminary to a call for security. No. 1180, C. and W. C., 19th October 1838, ... III. 32

18. The superintendence and control of the jail of the district at which his court may be held, as well as that of any district that may be subject to his jurisdiction, is vested in the session judge. No. 1198, W. C. 11th January, C. C. 25th January 1839,..... III. 42

19. A session judge holding a special sessions for the trial of a prisoner committed by a civil judge, is not competent to direct the civil judge to commit any other party who may appear from the evidence to be implicated: he may suggest the expediency of the measure, but the compliance of the civil judge is optional. No. 1206, C. C. 1st April, W. C. 26th April 1839. ..... III. 48

20. An order passed by the magistrate to prevent persons going about at night after a fixed hour, is appealable to the sessions judge under Section 5, Act XXIV. 1837. No. 1239, C. C. 19th July, W. C. 20th September 1839, ... III. 60

21. All appeals from a joint magistrate of whatever powers are appealable, under Act XXXI. 1841, exclusively to the session judge. No. 1326, W. C. 12th February, C. C. 26th March 1842, ... III. 87

22. In cases before the sessions courts as trials, the session judge is competent, under Section 15, Regulation XXV. 1814, and Clause 8, Section 7, Regulation XVII 1816, to order the dismissal of police officers convicted of any offence which may appear to require their removal from public office. No. 1328, C. C. 1st March, W. C. 15th April 1842,..... III. 87

SINGLE JUDGE OF COURT OF CIRCUIT.

See "Magistrates' orders, appeals from and revision of," Nos. 4, 13, 14, 15.

SINGLE JUDGE OF NIZAMUT ADAWLUT.

See "Nizamut Adawlut," Nos. 7, 11.

SINGLE JUDGE OF PROVINCIAL COURT.

See "Provincial Court," Nos. 1, 2, 3, 4, 6, 8, 9, 13.

SINGLE JUDGE OF SUDDER DEWANNY ADAWLUT.

See "Sudder Dewanny Adawlut," Nos. 1, 2.

SLAVERY.

1. The provisions of Regulation X. 1811 are applicable only "to the importation of slaves for the purpose of being sold, given away, or otherwise disposed of:" no part of it is applicable to the sale of slaves not imported into the British territories. No. 99, 23d April 1812,..... ..... I. 26

2. A special appeal having been admitted from a decree which declared the appellants and their families to be slaves, the Court of Sudder Dewanny Adawlut ordered the execution of the decree to be stayed without demanding security from the appellants. [*Since the enactment of Act V. 1843, no public officer can interfere to enforce an order whereby a person is declared to be a slave.*] No. 550, 9th May 1830,..... I. 232

3. A deed by which a party sells himself or others into slavery for a limited period cannot be registered under Regulation XX. 1812. [*See note on the preceding No.*] No. 812, 16th August 1833, ... II. 116

4. A magistrate has no authority to interfere to deliver to the petitioner a child whom he alleges to be his absconded slave. [*See note on No. 2.*] No. 887, W. C. 27th June, C. C. 18th July 1834, II. 172

5. On the complaint of a party alleged to be a slave that he is detained by violence, the enquiry should, in the first instance, be entered into in the criminal department, and if violence be proved, redress should be afforded him and the opposite party referred to a civil action to prove his claim. [*Act V. 1843 prohibits all such enquiry.*] No. 939, C. and W. C. 20th March 1825,..... II. 205

6. Regulation III. 1832 does not prohibit the transfer of slaves for money: it merely prohibits the removal of them for the purpose of traffic from one territory, British or foreign, to any other territory dependant on this presidency: consequently those slaves only are entitled, under its provisions, to their liberty, who have been so removed subsequently to the enactment of Regulation X. 1811. No. 955, C. C. 29th May, W. C. 15th June 1835, ... II. 214

7. A person adjudged to be the slave of another is entitled to appeal against the decision *in formâ pauperis*. [*See note on No. 2.*] No. 1009, C. C. 20th May, W. C. 10th June 1836, ... II. 256

8. Sections 5, 15, and 18, Regulation V. 1831, containing no provision excepting suits for the right to slaves from the cognizance of the moonsiffs, sudder ameens, and principal sudder ameens, slaves must be looked upon in the same light as other personal property; and suits regarding them are cognizable by the native judges. At the same time the Court were of opinion that it was highly inexpedient that such cases should go before a native, should a reference to an European judge be practicable. [*See note on No. 2.*] No. 1022, C. C. 8th July, W. C. 15th July 1836, ... II. 264

SNATCHING.

1. Snatching from the person, without any previous intimidation or violence, does not constitute the offence of robbery by open violence. No. 228, 13th November 1815, ... I. 75

SODOMY.

1. The regulations prescribing no specific punishment for sodomy, and the futwa being one of discretionary punishment by tazeer, the judge of circuit need not refer the case except for mitigation. No. 353, 9th May 1823, ... I. 146

SPECIAL APPEALS.

See "Appeals, VII." *passim.*

SPECIAL COMMISSION.

1. The provisions of Clause 5, Section 10, Regulation III. 1828, are applicable only to appeals from the decisions of the Sudder Board of Revenue; or in other words only to appeals from decisions which affect the rights of Government, and not to those of the revenue authorities which declare land hitherto held on a rent-free tenure liable to assessment. No. 492, 9th January 1829, ... I. 209

2. The judge of Purnea was informed that all suits pending under Regulation II. 1819, should be

retained on his file, as that district had not been placed under the jurisdiction of a special commissioner under Regulation III. 1828. No. 508, 22d May 1829, ... I. 216

3. The special commissioner of the Patna division was informed that by Clause 1, Section 2, Regulation III. 1828, suits for the resumption of rent-free lands, in districts to which a commissioner had been appointed under that regulation, can only be determined by the commissioner: that by Clause 4 of the same section all pending suits are to be transferred to the commissioner, and no appeal shall lie to any established court of judicature from any decision which has been passed, or may be passed by a Board of Revenue or collector previous to or pending the appointment of a commissioner: and that the Court of Sudder Dewanny Adawlut were precluded from admitting an appeal from a decree of the late third judge of the Patna provincial court upon a decision of the Board of Revenue and collector: and that by Clause 6, Section 4 of the regulation cited, the commissioner was authorised to admit the appeal, otherwise the party would be deprived of the right of appeal which was open to him prior to the passing of the regulation. No. 534, 1st January 1830, ... I. 226

4. All cases which were formerly cognizable by the special commissioner appointed under Regulation I. 1821, under the rules contained in Clauses 1 to 6 of Section 3 of that regulation, are now cognizable by the commissioners of revenue. No. 542, 19th March 1830, ... I. 229

5. The above mentioned rules as extended by Clause 2, Section 2, Regulation I. 1823, authorise the cognizance of all cases wherein it may appear that any plaintiff has been deprived of his right by an illegal sale, without reference to his being a sudder malgoozar or otherwise. No. 542, 19th March 1830, ... I. 229

6. The provisions of Clause 2, Section 3, Regulation XVIII. 1829, which require the courts to call on parties to state whether they wish their suits to be transferred to the commissioner of revenue, apply to appealed as well as original suits. No. 542, 19th March 1830, ... I. 229

7. The provisions of Regulation XVIII. 1829 refer to cases actually pending in the courts of judicature, and not to cases which may arise hereafter, which must be instituted in the revenue or judicial courts according as the subject matter may render them cognizable in the one or the other. No. 542, 19th March 1830, ... I. 229

8. In all suits of the nature above adverted to, not called for by the commissioner, the judge should exercise his discretion as to whether they should be transferred to that authority or not. No. 562, 18th June 1830, ... I. 236

9. In the trial of a case, made over to him under the orders of Government, by the commissioner of revenue, the judge should be guided by the rules applicable to the investigation and decision of claims of that nature as laid down in Regulation I. 1821, and subsequent enactments on the same subject; and should consider himself vested with exactly the same powers and authority as were possessed and exercised by the officers of the special commission, acting under the provisions cited, and subsequently, on the abolition of that office, by the commissioners of revenue. No. 984, W. C. 30th October, C. C. 20th November 1835, ... II. 232

STAMPS.

I. Documents on improper stamps or plain paper.

1. The collector's receipt for the amount of the penalty is not sufficient to legalise a document: it must be submitted to the superintendent to be stamped. No. 6, 3d April 1805, ... I. 2

2. Documents written on paper not bearing the prescribed stamp shall not be admitted as evidence or filed in any court of justice: but if the plaintiff can prove his claim by any other evidence, the courts of justice are not precluded from receiving such evidence. No. 292, 9th July 1818, ... I. 115

3. It is not only competent to but incumbent on a register of deeds to refuse to register a deed drawn up on a stamp of inferior value to that prescribed by the regulations. No. 438, 26th November 1826, ... I. 164

4. When a security bond has been declared inadmissible as evidence in consequence of its being written on plain paper, or paper bearing an improper stamp, the plaintiff may adduce other evidence of the security having been given. No. 970, C. C. 7th August, W. C. 4th September 1835, ... II. 223

5. The courts have no discretion, and must levy the fine prescribed from any vakeel or authorised agent, who may file any paper contrary to the regulations. No. 1120, C. C. 15th December 1837, W. C. 12th January 1838, ... II. 332

6. A civil court is at liberty to instruct a party presenting a deed bearing an improper stamp, to apply to the revenue authorities to have the proper stamp affixed. [*But see Circular Order No.* 179, *Vol. III.*] No. 1161, C. and W. C. 3d August 1838, ... III. 19

7. A deed is admissible as evidence in a court of justice to which a proper stamp has been affixed under the orders of any commissioner, on the representation of any collector subordinate to his authority. It is not the province of the civil courts to decide upon the powers of revenue officers in respect to each other, but, if the proper stamp be affixed, to receive the deed without question as to the competency of the authority by whose order the stamp was affixed. No. 1161, C. and W. C. 3d August 1838, ... III. 19

8. A special appeal having been admitted in a case originally decided on the evidence of a deed bearing an improper stamp, the decisions of both

lower courts should be set aside, and the court of first instance directed to restore the case to its original number on the file, and proceed to dispose of it by allowing the plaintiff an opportunity of supplying the defect. No. 1161, C. and W. C. 3d August, 1838,.... III. 19

9. As the law vests the local revenue authorities and the Board of Customs, Salt, and Opium, with the power of determining whether a particular document does or does not require a stamp, a deed declared by such authority to be exempt from stamp duty must be received by the courts. No. 1331, C. C. 1st April, W. C. 15th April 1842,..... III. 88

II. Stamps for Private Deeds.

1. *Hoondees* must be written on stampt paper. [*See Schedule A, Regulation X.* 1829.] No. 154, 21st April 1814, ... I. 48

2. *Kabeennamuchs* must be written on stampt paper. [*See Schedule A, Regulation X.* 1829.] No. 185, 17th August 1814, ... I. 57

3. The valuation of land paying revenue to Government assumed in Clause 1, Section 14, Regulation I. 1814, for regulating the stamp for petitions of plaint, is not applicable to the valuation of property between individuals coming within the provisions of Section 11, Regulation I. 1814. [*Regulation I. of* 1814 *has been rescinded by Regulation X. of* 1829.] No. 274, 18th June 1817,..... I. 98

4. *Bhye khattas*, or account books, need not be stamped. No. 275, 2d July 1817, ... I. 99

5. A deed of gift drawn on unstamped paper by an attorney in Calcutta, for the conveyance of property at Moorshedabad subsequent to the period fixed for the operation of Regulation I. 1814, the donor being at the time a resident of Calcutta, and the donee of Moorshedabad, is not admissible as evidence in the country courts. [*See note to No.* 3.] No. 312, 1st April 1820,..... I. 128

6. A security bond for the rent of *malgoozaree* land, executed to a landholder in behalf of his tenant, [Government not being a contracting party,] falls within the reason of the exemption provided for by Section 12, Regulation I. 1814, and may be received without a stamp. [*See note to No.* 3.] No. 321, 4th August 1820, ... I. 132

7. Bills of exchange executed within the Company's territories must be drawn on stampt paper; those executed beyond the Company's territories require no stamp. [*But see Articles* 4 *to* 6, *Schedule A, Regulation X.* 1829.] No. 324, 11th August 1820, ... I. 133

8. Where in a separate leaf in a merchant's book an entry of a sum advanced to an individual has been made in the form of a bond by the debtor, bearing interest, and regularly signed and attested, the leaf bearing no stamp, the writing must be treated as a bond on plain paper, and rejected *in toto*. No. 325, 18th August 1820, ... I. 133

9. If a person becoming security for the payment of a debt, affix his name in recognition of his responsibility, he is liable to be sued as a party with the principal, the transaction being a joint one; and it is not necessary to the admissibility of an action against him, that he should have entered into a regular security bond, on a separate stamp of the same value as that of the original obligation. No. 341, 1st June 1821,..... I. 139

10. Acknowledgments of partial payments of instalments are not required each to be written on stampt paper. [*Receipts above 50 rupees are required by Schedule A, Regulation X.* 1829, *to be written on stampt paper.*] No. 341, 1st June 1821, ... I. 139

11. In the transfer by sale of a house or other real property, an acknowledgment by the seller of the receipt of the purchase money, written on the back of the original deed, is not sufficient. A separate acknowledgment [*kubooli wusool*] should be executed on the prescribed stamp, before it can be received in evidence in the course of a suit on the subject of such transfer. No. 341, 1st June 1821, ... I. 139

12. There being no regulation which requires that *mahajon's books* shall be stamped, they are admissible as evidence though written on unstampt paper. No. 592, 6th May 1831,..... I. 247

13. All leases and counterparts [*pottahs* and *kubooluts*] granted to, and taken from the actual cultivators of the soil, should be written on unstampt paper, whether Government be, or be not, a party to the transaction No. 635, 20th May 1831, ... II. 9

14. Deeds of *hibeh-bila-yewuz* should be charged as "agreements" with such stamp as the parties may determine. No. 836, W. C. 11th October, C. C. 8th November 1833,..... II. 131

15. The account of a party being made up, and a balance struck and stated according to established usage at the foot of the sheet in the *bhye khatta*, or banker's book of accounts, a third party renders himself responsible for the eventual adjustment of the balance, by affixing his name in the capacity of security for the debtor's discharge of the creditor's claim. To render this security available, the leaf of the account book must be stamped. At the same time, if this be not done, it rests with the claimant to adduce other sufficient evidence of the security having been given, independent of the paper exhibiting it, which in its present state cannot be received in evidence of the fact. No. 970, C. C. 7th August, W. C. 4th September 1835, ... II. 233

16. The fact of two or more distinct and separate debts due by different individuals being engrossed on the same stamp does not vitiate the deed, provided the stamp be of a sufficient value to cover the whole amount lent. No. 1067, C. C. 21st April, W. C. 23d March 1837, ... II. 326

17. Though a separate security bond is not required when a person renders himself jointly liable for

the debt with the borrower by signing the original bond, [See Construction 341, No 9,] yet if a formal security bond be executed on the same paper as the original instrument, it is not admissible under the stamp regulations against the security. No. 1121, W. C. 29th December 1837, C. C. 2d February 1838, II. 333

18. The above Construction of Circular Order, Sudder Dewanny Adawlut, 27th October 1837, was merely intended to protect the rights of Government, and not to declare deeds drawn up under the circumstances stated inadmissible, provided proper measures are taken to have them legalized, by application to the revenue authorities under Section 11, Regulation X. 1829, to have the proper stamp affixed to them. No. 1147, C. and W. C. 27th April 1838,..... III. 12

19. It is not necessary that bonds, &c. should be drawn out in Company's rupees: they may be drawn out in siccas; and then, if for *value*, the Company's rupee will regulate the stamp,—if for a specific *coin* [as if a person covenant to deliver so many coss of the sicca currency, or so many dollars], the payment must be in the coin covenanted. No. 1151, C. and W. C. 27th April 1838, ... III. 15

20. A *hoondee* drawn on plain paper, if negotiated after acceptance cannot be admitted in court unless it be stamped, or be accompanied by a copy written on paper bearing the prescribed stamp. No. 1279, W. C. 19th June, C. C. 14th August 1840, ... III. 73

21. A memorandum of agreement for the time of the services of a *mukhtar*, specifying a fixed sum as his monthly stipend in money, and guaranteeing to him his daily food, must be written on the stamp prescribed by Article 2, Schedule A, Regulation X. 1829. No. 1306, W. C. 20th July, C. C. 20th August 1841, ... III. 82

III. Stamps in lieu of Institution Fee for Petitions of Plaint and Appeal.

1. The stamp duties prescribed by Regulation I. 1814, Section 13, must be levied on all appeals admitted after 1st May 1814, on the valuation stated in Section 14. [*Regulation I. of* 1814 *has been repealed by Regulation X. of* 1829.] No. 163, 2d June 1814, ... I. 50

2. When a plaint cannot be written on one sheet of paper, the remainder should be drawn up on paper prescribed for supplements by Section 17, Regulation I. 1814. [*Superseded by Construction* 870, *No.* 13.] No. 170, 20th July 1814,..... I. 52

3. The provisions of Sections 13 and 14, Regulation I. 1814, are applicable to all petitions of appeal, preferred subsequently to the 1st May 1814. [*See note to No.* 1.] No. 180, 7th August 1814, ... I. 56

4. No institution fee is required for *summary* suits. [*Superseded by Section* 7, *Regulation VIII.* 1831.] No. 187, 7th September 1814, ... I. 58

5. The Circular Order, Sudder Dewanny Adawlut, 20th April 1818, which provides that in case of a money bond, the stamp is to be calculated on the principal sum sent, does not apply to the value of stamp for plaints for the recovery of money; in which case the aggregate of principal and interest is to regulate the value of the stamp No. 409, 2d December 1825, ... I. 172

6. In suits for lakheraje land in which Government would not be entitled to any revenue from the land, if resumed, the petition of plaint must be written on the stampt paper prescribed for rent-free lands, whether the claim be by an individual against a *zumeendar* to hold land on a rent-free tenure, or by a *zumeendar* to resume land held on an illegal rent-free tenure. No. 576, 1st October 1830, ... I. 241

7. If the cause of action be one and the same, a plaintiff may sue for two or more distinctly assessed *munzuhs* or *mehals* in one and the same action, laying his plaint at the aggregate value of the whole sued for. No. 577, 5th November 1830..... I. 241

8. The penalty of nonsuit provided in the concluding part of Article 8, Schedule B, Regulation X. 1829, is applicable to all suits in which the conditions contained in those provisions have not been complied with. No. 577, 5th November 1830, ... I. 241

9. The stamp duty in lieu of the institution fee is not leviable on plaints in summary suits, such plaints being taxed under Article 7, Schedule B, Regulation X. 1829. [*Superseded by Section* 7, *Regulation VIII.* 1831, *which requires such plaints to be written on* 1-4*th the full stamp.*] No. 583, 7th January 1831, ... I. 244

10. In suits for *talooks*, *ousut talooks*, *hawalleks*, or *ousut hawalleks*, if instituted prior to the enactment of Regulation X. 1829, the judge, in determining the value of the cause of action, will be guided by the provisions of Section 7, Regulation XXVI. 1814. In suits instituted subsequently, the rules contained in paragraph 4, Article 8, Schedule B, Regulation X. 1829, are applicable. No. 687, 27th April 1832, ... II. 40

11. Though the land included in an *tjareh* or in the *jote* of a cultivating *ryot* cannot be transferred by sale, the interest of the party claiming the *tjareh* or *jote* is capable of being valued: the plaintiff should be allowed to lay his suit at the amount which he may consider the value of his interest in the thing claimed; to which if the defendant make objections, the court would decide thereon, after making the summary enquiry directed in Section 4, Regulation XIII. 1808 No. 702, C. C. 6th July, W. C. 27th July 1832, ... II. 47

* No. 1205, W. C. 15th March, C. C. 12th April 1839,..... III. 46

12. In suits instituted in the court of a moonsiff by a resident cultivator to obtain a reversal of a summary decision passed by a collector, adjudging a balance against him, and ejecting him as a defaulter,

the value of the suit should be estimated at the amount of the rent in dispute, or in other terms, at the sum sued for in the first instance. No. 862, W. C. 7th February, C. C. 29th February 1834, II. 156

No. 1205, W. C. 15th March, C. C. 12th April 1839,..... III. 46

13. When the whole matter of a petition of plaint or appeal cannot be comprised in a single sheet of stampt paper, the additional sheets need not be stampt paper. No. 870, W. C. 21st February, C. C. 27th March 1834, ... II. 161

14. Fractional parts of rupees are not to be excluded in calculating the value of stamps for plaints. No. 874, W. C. 4th March, C. C. 4th April 1834,..... II. 164

15. In a suit by a mortgager to regain possession of the property mortgaged, the amount of stamp should be calculated on the value of the property, [due regard being had to the rules laid down in Regulation X. 1829, for estimating that value,] and not on the sum for which the property was mortgaged. No. 957, W. C. 17th June, C. C. 7th August 1835, ... II. 215

16. Petitions of appeal from the decisions of collectors, under Regulation II. 1819, must be written on the full stamp, as in other cases of appeal. No. 987, Government, 17th November 1835,... II. 235

17. The defendant's objections to the value of the plaint should generally be brought forward in the answer to the plaint; when the presiding judge, after enquiry, will permit the plaintiff, should the value be underrated, to file a supplementary plaint under Section 7, Regulation XXVI. 1814. Cases however may occur, in which, though the defendant has not objected, it would be the duty of the appellate court to notice and rectify the error. No. 1046, C. C. 16th September, W. C. 2nd September 1836,..... II. 280

18. In cases of pre-emption, the value of the property should be estimated according to the rules of Article 8, Schedule B, Regulation X. 1829, and not at the amount inserted in the deed of transfer between the buyer and seller, or the aggregate of both. No. 1017, C. C. 23d September, W. C. 14th October 1836, ... II. 281

19. In a suit for 4646 sicca rupees, which equal 5254 Company's rupees, the plaint should be written on a stamp of 150 rupees, as required for the former, and not of 250 rupees, as required for the latter sum. [*See Circular Order, Sudder Dewanny Adawlut, 15th April*, 1842.] No. 1068, C. C. 20th January, W. C. 3d February 1837, ... II. 294

20. In suits by *Khoodkhars* against proprietors of land, whether assessed or rent-free, to maintain, preserve, or obtain their right of cultivation of a given quantity of land, held on a *pottah*, by prescription or otherwise: or to reverse a summary decree of ejectment passed against them in the *zumeendar*'s favor, under the provisions of Regulation XLIX. 1793; as well as suits on the part of proprietors, whether *malgoozars* or *manfeedars*, to eject an under-tenant from land held on a ryoty tenure; the value of the amount of action must be estimated according to the rule contained in para. 4, Article 8, Schedule B, Regulation X. 1829. No. 1101, W. C. 4th August, C. C. 25th August 1837, ... II 317

21. Petitions of plaint against officers of Government in their official capacity, preferred under Regulation II. 1814, must be written on stampt paper, like other petitions of plaint. No. 1116, W. and C. C. 8th December 1837,..... II. 330

22. Government having resumed a *jaghеer* in Benares, concluded a *zumeendaree* settlement of it with the late *jaghеerdar* for a term of ten years. Another party, claiming the proprietary right, brings an action to establish the same. Held that, where the settlement is not permanent, the value must be assumed at one year's *jumma*, or, where the land is permanently settled, at three times the annual *jumma*. No. 1148, W. C. 24th March, C. C. 6th April 1838,..... III. 11

23. In a suit to recover on an account kept in siccas, supplying the agreement to be for *value*, and not for *specific coins*, the calculation must be made at Company's rupees 106-10-8 per 100 siccas, or the intrinsic difference. [*But see Construction* 1068, No. 19.] No 1151, 27th April 1838,..... III. 15

24. When the plaintiff sues for the principal of a debt, in a court which he knows cannot adjudge a larger sum without, at the same time, claiming interest, he must be held to have relinquished his claim to interest, and cannot afterwards institute a second suit to recover it. *(See also Circular Order, 11th January 1839.)* No. 1182, C. and W. C. 2d November 1838, ... III. 32

25. Costs of suit are not to be added to the original amount in estimating the value of the property claimed No. 1190, C. and W. C. 14th December 1838, ... III. 40

26. The provisions of Sections 12 and 13, Regulation XXVIII. 1814, apply to any pauper appellant, whether he was a pauper in the original suit or not: i. e. he must present his petition of appeal on the stamp required for miscellaneous petitions, &c. But if the appellant appeared originally as a pauper, he would, of course, be at liberty to file a copy of the decree of the lower court on plain paper, being entitled to such copy by Section 8 of the Regulation. No. 1207, C. C. 1st April, W. C. 26th April 1839,..... III. 46

27. Suits instituted with a view to fix the *jumma* of *ryots'* holdings should be laid at one year's rent. No. 1272, C. C. 31st January, W. C. 19th June 1840,..... III. 71

28. In suits for fractional parts of *malgoozaree* estates, the amount of action is to be computed on a portion of the *jumma* of the entire estate corresponding with the fractional part sued for, and not at the

selling price. Thus if the suit be for a 4 anna share of an estate assessed at 1000 rupees and within the range of the permanent settlement, the valuation will be 750 rupees or three times the jumma, [250 rupees] of the fractional portion. No. 1340, W. C. 18th May, C. C. 17th June 1842, ... III. 91

IV. Stamps for Pleadings.

1. The pleadings in the courts of the native commissioners need not be written on stampt paper. No. 182, 17th August 1814, ... I. 57
No. 243, 15th March 1816,..... I. 81

2. Pleadings in summary suits need not be written on the stamp prescribed for pleadings by Section 17, Regulation I. 1814. No. 187, 7th September 1814, ... I. 58

3. All petitions filed in original suits, or in appeals regular or special, must be written on the stampt paper provided for pleadings by Section 17, Regulation I. 1814. *(See Articles 7 and 9, Schedule B, Regulation X. 1829.)* No. 202, 26th April 1815, ... I. 63

4. Pleadings in the court of the registers vested with special powers, wherever stationed, must be written on the same stamp as in the judge's court. [*Obsolete.*] No. 223, 7th December 1815,..... I. 73

5. Stampt paper is not required for pleadings in original suits and appeals not exceeding 64 rupees. *(Superseded by Clause 3, Section 9, Regulation V. 1831.)* No. 276, 24 July 1817, ... I. 99

6. The *wujoohaat-i-appeal*, or reasons for appealing, if not stated in the petition of appeal, should be filed as a separate pleading on the stamp prescribed by Article 9, Schedule B, Regulation X. 1829. No. 556, 28th May 1830, ... I. 234

7. The pleadings in all suits tried by the moonsiffs, whatever the amount, are exempted from stamp duty. But no suit, however small the amount, instituted before the judge, shall be held exempt, whether eventually referred to the subordinate authorities or retained on the judge's file. Pleadings in the zillah court in suits above 1000 rupees are to be written on 4 rupees paper; in original suits under 1000 rupees, and all appeals from sudder ameens and moonsiffs, on paper value 1 rupee. No. 767, W. C. 8th March, C. C. 29th March 1833,..... II. 87

8. In appeals from the decisions of collectors under Regulation II. 1819, the pleadings and other papers are liable to the same stamp duty as in other appeals. No. 768, W. C. 15th March, C. C. 29th March 1833, ... II. 87

9. Pleadings in appeals from the decisions of registers and principal sudder ameens must be written on a 4 rupee stamp. No. 834, C. C. 4th October, W. C. 8th November 1833, ... II. 131

10. Pleadings in original suits exceeding 5000 rupees, referred to the principal sudder ameens are to be written on stampt paper of one rupee value; Section 3, Regulation VII. 1832, being applicable only to the courts of the zillah and city judges. No. 1118, W. C. 15th December 1837, C. C. 5th January 1838, ... II. 331

V. Stamps for Exhibits and Lists of Witnesses.

1. A person wishing to file several exhibits, or to summon several witnesses, need not file a separate petition for each exhibit or summons. A single petition may be admitted for two or more exhibits or summons, provided the value of the stamp be sufficient to secure to Government the duty established for each exhibit filed or witness summoned. No. 145, 19th March 1814,..... I. 46

2. What has usually been considered as a distinct exhibit would be admissible as such, under Section 15, Regulation I. 1814, whether composed of two or more sheets. No. 146, 19th March 1814, ... I. 46

3. Copies of decrees in regular suits, if filed with petitions of appeal, whether the appeal be special or not, must be considered liable to the rules contained in Section 15, Regulation I. 1814; but if not filed, they do not fall within the rules. No. 179, 17th August 1814, ... I. 56
No. 289, 16th March 1818,..... I. 110

4. Though a party should bring his witnesses, without the issue of a summons, they cannot be examined unless a written nomination for each is filed on the requisite stamp. No. 182, 17th August 1814, ... I. 56

5. The stamp duty for exhibits and lists of witnesses is not leviable in suits before the native commissioners. No. 183, 17th August 1814,..... I. 57
No. 243, 15th March 1816,..... I. 81

6. Nor in summary suits. No. 187, 7th September 1814, ... I. 58
No. 249, 15th May 1816, ... I. 85

7. In the court of a register vested with special powers, wherever situated, the same stamp is required for lists of witnesses and exhibits as in the judge's court. [*Obsolete.*] No. 223, 17th December 1815, ... I. 73

8. Documents filed with petitions of special appeal are not subject to exhibit duty on being filed [*See also Construction* 961, *No.* 10.] No. 537, 8th January 1830, ... I. 228

9. Fees on exhibits and lists of witnesses in suits instituted prior to the operation of Regulation V. 1831, should be adjusted by the regulations applicable to such matters previous to the enactment of that regulation. No. 764, W. C. 1st March, C. C. 29th March 1833, ... II. 86

10. All documents filed with petitions of appeal, except the *vukalutnamch*, the *mokhtarnamch* under which the *vukalutnamch* may be executed, the security bond for costs, or for staying or enforcing execution, and the copy of the decree appealed, must be considered as exhibits, and accompanied by the

usual petition on stampt paper. In applications for special appeal, the exhibit fee would not be required until, on the admission of the special appeal, the documents are filed with the record of the proceedings. No. 961, W. C. 26th June, C. C. 7th August 1835, ... II. 218

11. Documents filed with applications for review of judgment are considered as exhibits and liable to stamp duty. No. 1058, W. C. 19th November, C. C. 21st October 1836, ... II. 287

12. Section 3, Regulation VII. 1832, modifies Schedule B, Regulation X. 1829, only so far as regards pleadings in the judge's court. All lists of witnesses must be charged as exhibits, and written on a stamp of one rupee. No. 1088, C. C. 21st April, W. C. 2d May 1837, ... II. 307

13. In cases still pending before the Court of Sudder Dewanny Adawlut, in which the Court may direct the zillah judge to take evidence on any particular point, the lists of witnesses filed before the judge must be written on the same stamp as if they were filed in the Court of Sudder Dewanny Adawlut, i. e. 2 rupees. But in cases sent back to the zillah judge for further investigation and re-trial, the lists must be written on a stamp of one rupee. No. 1088, C. C. 21st April, W. C. 2d May 1837, ... II. 307

VI. Stamps for Petitions and Applications.

1. The rule contained in Section 9, Regulation XXXVIII. 1795, for levying fees on miscellaneous petitions is superseded by Section 18, Regulation I. 1814. [*Regulation I. of* 1814, *has been repealed, and the present stamp law is Regulation X.* 1829.] No. 155, 21st April 1814, ... I. 48

2. Miscellaneous petitions in suits before the native commissioners need not be written on stampt paper. No. 183, 17th August 1814, ... I. 57

No. 243, 15th March 1816,..... I. 81

3. All miscellaneous petitions and applications presented to a magistrate must be written on the stamp prescribed by Section 18, Regulation I. 1814, [*Schedule B, Regulation X.* 1829,] except from foujdaree prisoners, and civil prisoners relating to their treatment in jail. No petitions on plain paper but those expressly excepted are to be read or filed: but a magistrate may exercise his discretion in receiving petitions on plain paper. No. 247, 1st May 1816, ... I. 84

4. Petitions of persons laying claim to property in moonsiffs' courts under Section 6, Regulation V. 1831, must be written on unstampt paper. No. 706, C. C. 20th July, W. C. 17th August 1832,..... II. 50

5. Applications for the payment of money deposited in court must in every case be made on stampt paper, as a record, unless a specific order should, at the same time, have been passed for the payment of the amount. No. 1093, W. and C. C. 9th June 1837, ... II. 311

6. Application by a pauper appellant, to stay execution of a decree given against him pending appeal, must be written on stampt paper. No. 1132, W. C. 16th February, C. C. 9th March 1838, II. 5

7. Parties objecting to the transfer and sale of property in execution of decrees, may petition the moonsiffs' courts on plain paper. No. 1278, W. C. 5th June, C. C. 26th June 1840,..... III. 73

VII. Stamps for Bail and Security Bonds.

1. Security bonds for costs of suit, &c. entered into by order of a civil court, should be written on the stamp prescribed for petitions presented to the court requiring the security. No. 555, 28th May 1830, I. 234

2. *Moochulkas* taken by magistrates from parties before them to secure their attendance during an investigation into criminal charges, should be written on plain paper. No. 679, W. C. 7th March, C. C. 18th May 1832, ... II. 35

3. Security bonds taken by police officers should be on unstampt paper. No. 710, W. C. 10th August, C. C. 14th September 1832, ... II. 53

4. *Dukhilnameks* taken from parties put in possession of houses, lands, &c. under a decree of court, need not be written on stampt paper. No. 870, W. C. 21st February, C. C. 27th March 1834, ... II. 161

5. Engagements entered into by farmers of public ferries and their sureties need not be written on stampt paper. No. 1111, C. C. 27th October, W. C. 22d September 1837,..... II. 326

6. When *moorchulkas* are taken from defendants in petty criminal cases to secure their attendance, the value of the stamp must be taken from the prosecutor, to be refunded by the defendant at the conclusion of the case, if the magistrate consider a refund proper. No. 1287, C. C. 23d October, W. C. 13th November 1840, ... III. 77

VIII. Stamps for Copies.

1. All copies of decrees and other papers transcribed after 1st May 1814, must be on the stamp prescribed by Regulation I. 1814, notwithstanding the decree or order was passed prior to that date. [*Regulation I. of* 1814 *has been repealed by Regulation X. of* 1829.] No. 171, 20th July 1814, I. 62

2. Copies of papers made for record on delivery of the originals to the parties, need not be written on stampt paper. [*Superseded by Article* 3, *Schedule B, Regulation X.* 1829, *which requires that such copies shall be written on stamps of eight annas.*]

No. 178, 17th August 1814, ... I. 65

No. 207, 1st June 1815, ... I. 66

3. Copies of decrees of the native commissioners do not require stamps. No. 183, 17th August 1814, ... I. 57

No. 243, 15th March 1816,..... I. 81

4. When authenticated copies of the legal documents specified in *Section 11, Regulation* I. 1814, are required as legal vouchers to be exhibited in lieu of the originals, the copies must be written on the same stamp as the original, whether prepared by a *cazee*, or other authorised person. [*See No.* 20, *Schedule A, Regulation X. of* 1829.] No. 207, 1st June 1815, ... I. 66

5. Copies of *mokhtarnamehs* filed previously to the promulgation of Regulation XVI. 1824, [*repealed by Regulation X. of* 1829,] must be written on a stamp of the same value as was used for the original under the regulations in force when such original instrument was executed. No. 412, 27th January 1826, ... I. 173

6. Copies of deeds, which have not been filed in any court of judicature, required from the office of a register of deeds, must be written on stampt paper of the same value as the original, or on paper of the value of 8 rupees, according as the party taking out the copy may, or may not, have a direct interest in the subject matter of the deed. [*See below No.* 7.] No. 428, 4th August 1826, ... I. 180

7. When such deeds have been filed and become records of court, they are specially exempted from the description of stamps required for deeds not of record. [*See Articles* 20 *to* 23, *Schedule A, and Article* 3, *Schedule B, Regulation X.* 1829.] No. 428, 4th August 1826, ... I. 180

8. Applications for copies are to be made on stampt paper, and the copy is to be written on one side only of the paper. No. 773, W. C. 29th March, C. C. 26th April 1833, ... II. 89

9. Copies or extracts of merchants' accounts and books to be kept with the record must be made on stamps of the value of eight annas per sheet. No. 1372, C. C. 20th January, W. C. 6th February 1843, ... III. 101

IX. Stamp Venders.

1. If a true account of the receipts of the proceeds of the sale of stampt paper entrusted to him be rendered by a stamp vender, only the penalty inscribed in Clause 11, Section 10, Regulation X. 1829, is exigible for the non-delivery of the paper or money due according to the account. But if the account rendered be false, the vender is liable, under the general regulations, to a prosecution in the criminal court for fraud and embezzlement. No. 626, 25th February 1831, ... II. 4

STOLEN PROTERTY.

1. The provisions of Sections 7 and 8, Regulation I. 1811, apply only to cases wherein it shall appear that the persons convicted knew that plundered or stolen property was obtained by robbery or theft, as the time of receiving or purchasing it. No. 133, 12th August 1813, ... I. 39

2. The offence of receiving stolen goods being a distinct offence, and not a mere accession to the theft, the receiver may be brought to trial without the conviction of the thief. The record of the conviction of a person charged with theft is not conclusive against an alleged receiver of the stolen goods to prove the theft, if the latter produce evidence to negative the fact of a theft having been committed. No. 217, 27th July 1815, ... I. 69

3. The receipt of *money* stolen, though punishable under Mahomedan law, does not come within the provisions of Section 7, Regulation I. 1811, relative to persons guilty of receiving "stolen goods, cattle, jewels, or effects." [*But this has been provided for in Section* 4, *Regulation XII.* 1818.] No. 217, 27th July 1815, ... I. 69

4. Knowingly receiving property obtained by burglary comes under the general definition of knowingly receiving stolen property, and the degree of punishment is discretionary according to circumstances. No. 303, 9th July 1819, ... I. 123

5. A commissioner objecting to the magistrate's sentencing receivers to a more severe punishment than the thief, the Court observed that they were not prepared to narrow the discretion confided to the magistrates, as the offence of receiving stolen property admits of so many shades of difference that it would be impracticable to define, with any degree of accuracy, under what circumstances a case of that description shall be considered of an aggravated nature or otherwise. No. 406, 21st December 1827, ... I. 197

6. Property which may be proved to have been purchased with money stolen from the prosecutor, should be delivered to him. No. 604, 11th November 1831, ... I. 251

7. The word "*thangeedaree*" should not be used in commitments to designate the crime of knowingly receiving stolen or plundered property. No. 857, 24th January 1834, ... II. 149

8. A magistrate is not competent to punish receivers of stolen property in any case, the aggravating circumstances of which render the commitment of any of the prisoners to the sessions court necessary, but he should commit them. No. 857, 24th January 1834, ... II. 149

9. Receiving stolen property is a bailable offence, and the accused, if not charged with the original theft, should be allowed the option of giving bail. No. 1237, W. C. 19th July, C. C. 16th August 1839, ... III. 60

SUBSISTENCE MONEY OF CIVIL PRISONERS.

See "Civil Jails and Prisoners," Nos. 1, 2, 8 and 10.

SUBSISTENCE MONEY OF WITNESSES.

See "Witnesses," No. 11.

SUCCESSION, SUMMARY INTERFERENCE WITH.

See "Zillah and City Courts," Nos. 7, 10.

SUCCESSION TO THE ESTATES OF DECEASED PERSONS.

1. The complainant must appear in person to make the solemn declaration required by Section 3, Act XIX. 1841; such declaration cannot be made through an authorized agent. No. 1319, C. C. 11th February, W. C. 4th March 1842, III. 85

SUDDER AMEENS.

1. No stamps are required for pleadings or exhibits in appeal from decisions of moonsiffs referred for trial to sudder ameens. [*Obsolete, as sudder ameens cannot try such appeals*] No. 103, 21st May 1812, ... I. 27

2. No stamps are required for summonesses in original suits referred to sudder ameens. [*Superseded by Nos. 5 and 11, Schedule B, Regulation X. of* 1829.] No. 243, 15th March 1816, ... I. 81

3. The civil surgeon is considered eligible to the office of sudder ameen. No. 269, 26th March 1817, ... I. 95

4. Summary suits for rent are not referrible to sudder ameens. [*See Regulation VIII.* 1831.] No. 322, 4th August 1820, ... I. 132

5. The sudder ameen should decide suits between Mahomedans according to Mahomedan law, requiring a *futwa* from the law officer in cases of doubt. No. 424, 30th June 1826, ... I. 178

6. Sudder ameens executing decrees have no power to order the imprisonment of debtors or of persons resisting process of court without a reference to the judge, nor can they in such cases issue perwanehs to moonsiffs and other mofussil officers. [*But see Section 7, Regulation VII.* 1832, *and Section 3, Act VI.* 1848.] No. 451, 30th March 1827, I. 190

7. Sudder ameens investigating and trying cases referred to them by the magistrate under Section 4, Regulation III. 1821, have no authority to issue *perwaneks* to thanehdars, or other mofussil police officers. No. 451, 30th March 1827, ... I. 190

8. Parties in suits referred to sudder ameens should not be subjected to the expense of stampt paper, though the amount or value of the property in dispute should exceed 150 sicca rupees. *(Superseded by Article 8, Schedule B, Regulation X.* 1829.) No. 463, 12th October 1827, ... I. 196

9. The provincial court are vested with the power of confirming the judge's nomination of a person to officiate as a sudder ameen. [*Superseded by Section 13, Regulation V.* 1831.] No. 514, 24th July 1829, ... I. 218

10. Sudder ameens and moonsiffs are not held to be native officers who are prohibited by Section 8, Regulation XIII. 1797, from interfering publicly or privately in suits or matters pending before the judge's court. No. 520, 21st August 1829, ... I. 221

11. Sudder ameens are to be guided, in regard to *tuhubana*, by the rules for the guidance of the zillah and city judges previously to the enactment of Regulation V. 1831, viz. Clauses 4 to 7, Section 14, Regulation XXVI. 1814. No. 668, 13th January 1832, ... II. 31

12. After the period fixed for the operation of Regulation V. 1831, sudder ameens have no authority to try appeals from the decisions of moonsiffs. No. 676, 24th February 1832, ... II. 34

13. The Sudder Dewanny Adawlut cannot interfere with the decisions of the zillah and city judges in suits tried originally by the sudder ameens, though the judge's decision was passed before the period fixed for the operation of Regulation V. 1831. No. 688, W. C. 27th April, C. C. 18th May 1832, ... II. 41

14. A magistrate cannot refer suits under Regulation XV. 1824, [Act IV. of 1840,] to sudder ameens under Clause 6, Section 18, Regulation V. 1831, those provisions applying to cases of a strictly criminal nature. No. 689, W. C. 26th April, C. C. 18th May 1832, ... II. 41

15. Sudder ameens and moonsiffs are not prohibited from trying suits in which other sudder ameens or moonsiffs are parties. No. 692, 18th May 1832, ... II. 34

16. The processes of sudder ameens in criminal cases should be issued under their signature, but under the seal and through the officers of the magistrate. No. 741, C. C. 7th December 1832, W. C. 11th January 1833, ... II. 69

17 A suit in which the collector is a party cannot be referred to a sudder ameen. [*Superseded by Act XI.* 1836.] No. 801, W. C. 5th July, C. C. 2d August 1833, ... II. 109

18. Though suits for sums not exceeding 300 rupees, cognizable by moonsiffs, may, for special reasons, be referred to a sudder ameen, the general practice of doing so is objectionable. No. 833, W. C. 27th September, C. C. 18th October 1833, II. 130

19. When it may appear to the Sudder Dewanny Adawlut that a moonsiff or sudder ameen has tried a suit, which from its amount or other cause was not legally within his cognizance, and the zillah or city judge has decided an appeal therefrom on its merits, without adverting to this fact; the Court will admit a summary appeal, and, considering the original decision of the sudder ameen or moonsiff, and the decision of the zillah judge thereon, equally null and void, will quash all the proceedings in the case, and direct the judge to cause the original suit to be tried *de novo* by the authority competent to do so. [*This Construction has been superseded on the ground of the jurisdiction of the Court in such cases being*

barred by the positive rule in Clause 1, Section 28, Regulation V. 1831, that the decisions of the zillah and city judges in appeal from the decisions of sudder ameens and moonsiffs shall be "final, any thing in the existing Regulations to the contrary notwithstanding"—and has been revoked by the Circular Order, Sudder Dewanny Adawlut, dated 26th September 1842., But by Act III. 1843, a special appeal now lies to the S. D. A.] No. 1003, 19th March 1836, ... II. 249

20. When a judge has modified or confirmed the order of a sudder ameen imposing a fine, he may refer the order to that officer to carry it into execution. [*Section 4, Act VI. 1843, authorizes the sudder ameens to levy fines without reference to the judge.*] No 1020, C. C. 1st July, W. C. 22d July 1836, ... II. 263

21. The law does not require that the judge should confirm all appointments by the native judges of the ministerial officers of their respective courts. The interference should be restricted to prevent the appointment of improper persons, and the dismissal without good and sufficient reason of those already appointed. No. 1160, W. C. 27th July, C. C. 17th August 1838, ... II. 18

22. A sudder ameen cannot appeal from the order of a magistrate in a case originally investigated by the former, the right of appeal possessed by the party dissatisfied being sufficient for the ends of justice. No. 1185, C. C. 19th November, W. C. 19th October 1838, ... III. 34

23. Sections 10 and 12, Regulation XXIII. 1814, though applicable to the principal sudder ameens, are not so to the *sudder ameens* and moonsiffs. [*Circular Order, 20th August 1841, declares these sections applicable to the courts of the sudder ameens.*] No 1226, W. C. 21st June, C. C. 2d August 1839, ... III. 56

24. The processes of principal sudder ameens and sudder ameens required to be enforced in another district, should be issued under their seal and signature as prescribed by Clause 4, Section 15, Regulation V. 1831, and, with reference to Clause 3, Section 2, Regulation II. 1806, be sent by the sudder ameen to the judge of the zillah or city court in which they are to be executed. No. 1235, W. C. 19th July, C. C. 9th August 1839, ... III. 59

SUDDER DEWANNY ADAWLUT.

1. A obtains a decree in the zillah court against B, who appeals to the provincial court. The judges of the latter court call for a *bewustch*, and upon this *only* the decision of the zillah court is reversed. A appeals to the Sudder Dewanny Adawlut, where the *bewustch* appears to be at variance with the *shasters* and inadmissible, but the evidence is esteemed sufficient to establish the right of B. On this evidence one judge of the Sudder Dewanny Adawlut proposed to confirm the reversal of the zillah decree, the *bewustch* of the provincial court being rejected. Held, that the rejection by the sitting judge of the law opinion delivered in the court below, rendered it necessary that the case should be referred to another judge for his concurrence. No. 538, 29th January 1830, ... I. 228

2. The zillah judge, in executing a decree obtained by A against B, rejected the plea of the son of B that the decree had been satisfied, and ordered the sale of B's property. Held, that a single judge of the Sudder Dewanny Adawlut was competent, without calling for the proceedings, to annul the sale, and direct further evidence to be taken as to the truth of the statement of B's son. No. 804, W. C 19th July, C. C. 16th August 1833, ... II. 110

No. 839, W. C. 11th October, C C. 8th November 1833, ... II. 134

3. Petitions of special appeal from the decisions of the zillah and city judges pending undecided on the files of the provincial courts, at the time of their abolition, must be heard and disposed of by the Sudder Dewanny Adawlut No. 814, W. C. 23d August, C. C 27th September 1833, ... II. 118

4. A single judge of the Sudder Dewanny Adawlut may reject a petition of special appeal transferred from one of the late provincial courts, although one judge of the latter court has recorded his opinion for the admission of the appeal No. 845, W. C. 29th November, C. C 20th December 1833, ... II. 143

5. In appeals received from the late provincial courts, the same stamps are to be used as if the appeal had been instituted in the Sudder Dewanny Adawlut. No. 880, W. C. 11th April, C. C. 2d May 1834, ... II. 168

SUICIDE.

1. A Hindoo is liable to punishment for aiding and abetting in the suicide of a leper. No. 985, W. C. 30th October, C. C. 18th December 1835, ... II. 233

SUMMARY APPEALS.

See "Appeals, VIII" *passim*.
See "*Dismissal on default*," Nos 2, 4.
See "Dispossession or disputed possession, summary process in civil courts, in cases of," Nos. 2, 10, 15.
See "Nonsuit," No. 3.
See "Rent, summary suits and process for," Nos. 15, 19, 34.

SUMMARY DECREES.

See "Execution of Decrees, I." No. 5.
"Execution of Decrees, II." Nos. 1, 2, 3, 4.

See "Execution of Decrees, III." No. 10.
"Execution of Decrees, IV." No. 2.

SUMMARY SUITS AND PROCESS FOR RENT.

See "Rent, summary suits and process for."

SUMMARY SUITS REGARDING DISPOSSESSION.

See "Dispossession, suits for, in the civil courts," *passim*.
"Dispossession, suits for, in the criminal courts," *passim*.

SUPERINTENDENT OF POLICE.

1. The superintendents of police, in their capacity of magistrate, are equally subject to the control of the courts of circuit with other magistrates: and warrants and orders of the court of circuit may be issued to them in like manner as they are usually issued to the zillah and city magistrates. No. 82, 28th March 1811, ... I. 19

2. The superintendent of police is competent to pass sentence against any person, amenable to his jurisdiction, who may be convicted before him for resistance to the execution of a warrant or other legal process issued by him under Section 6, Regulation X. 1808: and also against all persons apprehended by and proved guilty before him, of any offence, punishable under the existing Regulations by the zillah and city magistrates: but in neither case can he apply to the magistrate to carry the sentence into effect. [*See Section 5, Regulation III.* 1812, *by which he may certify his sentence to the magistrate.*] No. 98, 12th March 1812,... ..... I. 26

3. The superintendent of police is authorized to make application to be furnished with a copy of the proceedings in trials by the courts of circuit, and it is incumbent on those courts to comply with such applications. No. 141, 20th January 1814, ... I. 42

4. The rule contained in Section 17, Regulation IX. 1793, and corresponding enactments, being applicable to the superintendents of police in their capacity of magistrates, the calendars prescribed should be submitted monthly by those officers to the court of circuit for the division to which it may properly belong to take cognizance of the case comprehended in those calendars, with reference to the district in which the prisoner has been apprehended. No. 143, 3d February 1814,..... I. 44

5. The superintendents of police may attend the court of circuit as public prosecutor in cases not committed by themselves: but in such cases their assistants or those of the magistrate may be appointed to manage the prosecution. The superintendent of police attending cannot interfere with the proceedings in any other capacity than that of public prosecutor. No. 279, 9th July 1817, ... I 101

6. The commissioner in his capacity of superintendent of police has no authority to exercise any interference with the criminal jails,—the duty imposed upon the superintendent of police by Section 2, Regulation XVII 1816, of preparing and keeping up a register of jail establishments, not being intended to confer on him the power of interfering in any way with the internal management of the jail or the officers attached to it. No. 746, C. C. 28th December 1832, W. C. 8th February 1833, ... II. 72

7. Under peculiar circumstances however the court considered the commissioner authorized in interfering as superintendent of police in a case of riot in a jail. No. 909, W. C. 17th October, C. C. 14th November 1834,..... II. 186

8. As the magistrate's acts in the management of ferries are subject to the control of the superintendent of police, it is not competent to the session judge to receive appeals from the magistrate's orders in such cases. No. 1144, C. and W. C. 6th April 1838,..... III. 11

9. Escape of convicts should be reported to the superintendent of police, and measures for their apprehension taken by the magistrate in communication with that officer, who however cannot exercise any authority over the guards of prisoners effecting their escape. No. 1162, W. and C. C. 3d August 1838,..... III. 20

10. Though the superintendent of police can exercise no control over the jails, all correspondence relating to the strength and expense of the jail establishment should still be conducted through the office of the superintendent of police. No. 1197, C. C. 4th January, W. C. 18th January 1809, III. 43

SUPERINTENDENT OF POLICE IN THE GOVERNOR GENERAL'S CAMP.

See "Magistrate's orders, appeals from and revision of," No. 55.

SUPPLEMENTARY PLAINT OR PLEADING.

1. A person having inadvertently omitted in his petition of special appeal to state the grounds on which he appealed, may be allowed to supply the omission by a supplementary petition on the stamp prescribed by Section 17, Regulation I. 1814. No. 248, 8th May 1816,..... ..... I. 85

2. A suing B for possession of real property in virtue of a deed of sale in the moonsiff's court, the rights and interests of B in the property are sold by the collector in satisfaction of a decree to C *after* the institution but *before* the decision of the suit. Held, that it is competent to the moonsiff to receive an amended plea, including C among the defendants, such amended plea not being considered a supplemen-

tal plaint which a moonsiff is not competent to receive. *No. 1308, W. C. 28th August, C. C. 17th September 1841,* ..... III. 82

3. A civil court authorized to admit supplemental pleadings may *allow* one supplemental plaint or answer to be filed on the application of the party wishing to do so; but has no authority to dictate to the parties and *order* one to be filed without such application. No. 1363, W. C. 24th August, C. C. 23d September 1842, ... III. 98

SUPPLY OF CARRIAGE FOR TROOPS AND TRAVELLERS.

See "Carriage, supply of, for Troops and Travellers."

SUPREME COURT.

See "Assistance, Writ of," Nos. 1, 2, 3.

SUTTEE.

1. Held, that a police daroghs, on coming to the village after the suttee had been burnt, was not authorized to take parties into custody before he had made an enquiry to ascertain who had aided in the performance of it: he should merely have made the enquiry and reported the result to the magistrate. [*The practice of Suttee was declared illegal by Regulation XVII.* 1829.] No. 598, 29th July 1831,... I. 249

2. The Circular Order, Nizamut Adawlut, of 4th December 1829, is not to be understood as prohibiting the use of force in the event of an attempt to persist in performing the ceremony after due warning. [*See note to No.* 1.] No. 749, W. C. 4th January, C. C. 1st February 1833, ... II. 75

3. A person convicted of aiding and abetting a *suttee* cannot be sentenced to labor in addition to imprisonment. [*Superseded by Circular Order, 30th October* 1840.] No. 1125, C. and W. C. 23d January 1838, ... III. 1

THUGGEEDAREE.

See "Stolen Property," No. 7.

THEFT.

1. A magistrate may punish theft with six months' imprisonment and 30 rupees. [*Corporal punishment abolished and a period of imprisonment substituted for it by Section* 2, *Regulation II.* 1834.] If any objection exist to the infliction of rupees, and six months' imprisonment be not considered a sufficient punishment, the magistrate must commit to the court of circuit. [*The magistrate's powers have been enlarged by Regulation XII.* 1818.] No. 65, 16th August 1810,..... I. 15

2. A magistrate cannot in cases of theft pass a *sentence of imprisonment exceeding six months,* unless the theft should have been attended by one of the six aggravating circumstances enumerated in Clause 4, Section 3, Regulation XII. 1818. No. 358,7th November 1823,..... I. 149

3. It is competent to a magistrate in a case of theft, by a servant, of his master's property, the amount or value of which may be above 50 rupees, but not exceed 300 rupees, and unattended with personal violence or other circumstance of aggravation, to sentence on conviction to 80 rupees, [*see note No.* 1,] and imprisonment with hard labor for two years. No. 391, 10th June 1825, ... I. 168

4. A *magistrate is* not bound to dispose of a case of theft, but may commit the offenders to the court of circuit, should *any* peculiar circumstances in the case induce him to consider this course of proceeding preferable; but he should distinctly state, in his roobucarce of commitment, the circumstances which induced him to commit it; and when the magistrate has committed, it is not competent to the court of circuit to return the proceedings and instruct the magistrate to dispose of the case himself. No. 391, *10th June 1825,* ..... I. 168

5. On a *second* conviction of theft, [the amount or value of the property stolen in the *first* case being above 10, but not exceeding 300 rupees,] the magistrate is competent to punish, provided the value in the second case do not exceed 300 rupees. No. 419, 12th May 1826, ... I. 176

6. The magistrate was informed that he was competent to punish a female convicted of theft to the full punishment of two years, on the ground of her having been twice before convicted and appearing to be an incorrigible thief. No. 468, 8th February 1823,..... I. 198

7. The rule in Section 5, Regulation VI. 1824, which declares a petty theft not exceeding ten rupees, not to be an heinous offence, applies only to the question of commitment; and cannot be held to supersede that contained in Section 3, Regulation XII. 1818, which authorizes a magistrate to pass a sentence of two years' imprisonment on conviction of theft, where the offender may have been before convicted of the same offence, whatever be the amount taken in either case. No. 486, 24th October *1828,* ..... I. 207

8. Unaggravated cases of burglary and theft cannot be taken up by the police, unless the injured party desire it by a written petition. No. 708, W. C. 27th July, C. C. 24th August 1832, ... II. 53

9. A person being charged with stealing a *brahmuee* bull, it was held that the fact of there being no ownership in any individual, did not affect the criminality of the person who was alleged to have taken the bull, which must depend altogether on the *animus* by which he was actuated. No. 803, C. C. 5th July 1833, ... II. 109

10. A sentence of imprisonment for one year in lieu of stripes, on a conviction of theft not exceeding 50 rupees, may be passed by a magistrate in addition to imprisonment for six months. No. 1183, C. C. 9th November, W. C. 12th October 1838, ... III.

11. In cases of burglary and theft unattended with personal violence, the suffering party is not bound to report the case to the police, unless he should be a zumeendar, and have to report the occurrence in that capacity. No. 1338, C. C. 13th May, W. C. 10th June 1842, ... III.

THIRD PARTY.

See "Execution of decrees, XI." Nos. 2, 4.

See "Rent, Summary Suits and Process for," Nos. 27, 45.

THUGGEE.

1. Act XXX. 1836, does not authorise a session judge to dispense with a futwa on the trial of a prisoner charged with a specific act of murder and thuggee, unless the prisoner be tried under Regulation VI. 1832, with jurors or assessors. No. 1074, C. C. 10th February, W. C. 27th January 1837, ... II.

See "Jurisdiction of Criminal Courts," No. 7.

TRANSFER OF PROPERTY.

See "Police Officers," No. 9.

TRANSLATIONS.

See "Records," No. 3.

TRAVELLERS.

See "Carriage, supply of, for Troops and Travellers," *passim*.

TRESPASS OF CATTLE.

See "Police Officers," No. 14.

TRIALS, CONDUCT OF.

See "Conduct of Trials," *passim*.

TRIALS POSTPONED.

See "Postponed Trials," *passim*.

TROOPS.

See "Carriage, supply of, for Troops and Travellers,"

TULUBANA.

See "Peons," Nos. 1, 4, 6.

TUSHEER.

1. *Tusheer* cannot be awarded by the court of circuit under Clause 7, Section 2, Regulation LIII. 1803. No. 104, 24th June 1812, ... I. 28

2. There is no rule for exempting from *tusheer* a female convicted of perjury. No. 506, 8th May 1829, ... I. 215

UNSIGNED ROOBUCAREES.

1. A magistrate having, on leaving the station on sick certificate, left certain *roobucarees* unsigned, the acting magistrate was directed to sign the roobucarees, the orders of which might be recorded in the magistrate's English note book in his hand writing, certifying thereon that he had compared them with the note book. In cases in which no note was recorded, the acting magistrate was directed to pass such order as might, on inspection of the proceedings, appear just and proper, leaving the party dissatisfied with it to appeal in the regular course. No. 729, 2d November 1832, ... II. 62

2. A deceased judge having left a decision unsigned, his successor was directed to examine the vakeels of the parties in whose presence the decision was given, and the person who wrote it out, and compare it with any note book in the handwriting of the late judge which might be forthcoming; and, unless the result of the enquiry should lead him to doubt the genuineness of the decision, to sign it, making a short memorandum explaining why it was signed by him. No. 910, 17th October 1834, ... II. 186

VACATIONS.

See "Dismissal on Default," No. 18.

See "Dispossession or disputed possession, summary process of the civil courts in cases of," No. 12.

See "Moonsiffs, VI." No. 6.

VILLAGE ACCOUNTS.

1. On the institution of a suit for rent before a judicial officer, proof must be required that the plaintiff has conformed to the rules laid down in Sections 14 and 15, Regulation IX. 1833; the nature of the proof will of course be such as the plaintiff is able to adduce. No. 884, W. C. 16th May, C. C. 13th June 1834, ... II. 170

VUKALUTNAMEH.

See "Moonsiffs, III." No. 11.

See "Pleaders," Nos. 3, 9, 13, 23.

WAGES.

See "Workmen and Servants."

WARDS, COURT OF.

See "Government and its Officers, suits against," No. 1.
See "Guardians and Minors," Nos. 2, 5.
See "Leases," No. 2.

WARRANTS.

1. Warrants should be addressed to the chief magisterial authority of the district, whether he be denominated magistrate as in the case of Chittagong, or joint magistrate as in the case of Noacolly. No. 847, 13th December 1833,..... II. 143

WATCHMEN.

See "Neglect of Duty," Nos. 1, 2, 9.

WEIGHTS.

1. Magistrates may punish as a fraud, under the general regulations, the offence of using short weights, but cannot prescribe a current standard of weights. No. 1274, W. C. 28th February, C. C. 27th March 1840,..... III. 71

WESTERN COURT.

See "Nizamut Adawlut," Nos. 8, 10, 11.

WITNESSES.

1. A magistrate is competent to compel the attendance of any witness, whose evidence may be required, although such witness was not named on oath by the prosecutor or other person as acquainted with the circumstances of the case. No. 78, 14th February 1811,..... I. 18

2. The rule laid down in Construction 79 is superseded by Construction 457. No. 79, 28th February 1811, ... I. 18

3. The vakeels of the civil court may be required to witness confessions: and the police daroghas may summon respectable persons to witness confessions made before them No. 101, 23d April 1812, I. 26

4. A witness who has been fined for refusal to take an oath cannot, after discharging the fine, be admitted to give evidence on solemn declaration, unless the judge, who imposed the fine, see reason to change his opinion that the prisoner was not, in the first instance, a fit object of exemption from taking an oath, in which case the fine may be remitted, and the witness admitted to give his evidence on a *Kulufnameh*. No. 110, 3d September 1812, ... I. 29

5. No limitation is fixed for the confinement which the court may award in commutation of fines adjudged in cases of refusal to make oath, &c. The court must exercise its discretion according to the circumstances of each case. A witness fined for refusing to swear is to be discharged on paying the fine, if the suit in which his evidence was required have been decided; or kept in confinement, whether he have paid the fine or not, if the suit be still pending, until he consent to give his evidence on oath as required. No. 110, 3d September 1812,..... I. 29

6. The provision in Section 6, Regulation IV. 1793, (Section 2, Regulation VIII. 1795, and Section 7, Regulation III. 1803,) requires proof on oath [not the prosecutor's oath exclusively] that the evidence of the witness is material to the cause, before an order can be issued for his apprehension. It is only applicable to the case of a witness duly summoned and not attending. In the case of a witness attending and refusing to give evidence, or, after having given evidence, refusing to sign his deposition, no new proof need be called for that his evidence is material. No. 159, 19th May 1814, ... I. 49

7. A witness duly summoned and failing to attend is liable to personal arrest and a fine not exceeding 500 rupees. No. 172, 27th July 1814, ... I. 53
No. 487, 12th September 1828,.....I 207

8. When a witness duly summoned has evaded the warrant issued for the seizure of his person, a proclamation should be issued requiring his attendance within a certain period; and if he fail to attend within that period, the judge should impose a fine not exceeding 500 rupees, and proceed to levy the same by attachment and sale of his property. No. 172, 27th July 1814, ... I. 53

9. When the summons has not been personally served on a witness, he cannot be proceeded against either by fine, or the issue of a warrant for his seizure. No. 172, 27th July 1814,..... I. 53
No. 465, 7th December 1827, ... I. 197
No. 487, 12th September 1828, ... I. 207

10. The deposition of witnesses should be taken down in the language and character in which the person examined may wish to have it recorded: when the deponent may not avail himself of the option, it should be recorded in Persian. [*The substitution of the vernacular languages for the Persian, renders the Construction inoperative.*] No. 204, 18th May 1815, ... I. 64

11. The subsistence money of the witnesses in petty criminal cases need not be lodged until the prosecutor is desirous of taking out process to procure their attendance; and the witnesses should not be summoned, until the magistrate or his assistant is prepared to take up the case. No. 221, 8th September 1815, ... I. 72

12. Construction 389, which declares that a magistrate cannot enter into any evidence for the defence of a prisoner in a case committable to the

court of circuit, has been superseded by Regulation VIII. 1830. No. 389, 3d June 1825, ... I. 160

13. A magistrate is not competent under Regulation IV. 1820, to confine a person for refusing to be sworn as a witness before a court martial,' sent to him for that purpose by the military authorities.' [*Superseded by Section* 6, *Act XI.* 1841.] No. 401, 19th August 1825, ... I. 168

14. Construction 79 is not to be abided by. A witness refusing to give evidence should be dealt with according to the rule contained in Section 2, Regulation L. 1803, as detailed in Constructions 110. [See Nos. 4 and 5 of this Article.] No. 457, 31st August 1827, ... I. 192

15. The evidence of a single witness, if believed, is sufficient for the conviction of a prisoner. No. 634, 6th May 1831, ... II. 8

16. The evidence of witnesses for the prosecution in a criminal trial cannot be taken in the absence of the accused. No. 658, 16th September 1831, II. 27

17. The attachment by a magistrate of the lands of a non-attending witness upon whom a subpœna has not been served, is illegal. No. 698, 8th June 1832, ... II. 45

18. The fact of a witness being afflicted with leprosy does not bar his evidence in our courts of justice.' No. 726, 26th October 1832, ... II. 60

19. A person who gives a bribe cannot be compelled to give evidence on oath touching the bribe alleged to have been administered by him, as he would himself be liable to a criminal prosecution for giving it. No. 757, 28th February 1833, ... II. 82

20. Other evidence than that of the serving peon is necessary to prove the service of a moonsiff's process, to enable the moonsiff to try the case *exparte*. No. 775, 4th April 1833, ... II. 90

21. A magistrate cannot try a case of bribery against a salt daroghu, on evidence taken before himself in his capacity of salt agent. No. 817, 23d August 1833, ... II. 119

22. The deposition of an European witness must be recorded in English, and a translation of it in Persian [now in the vernacular] language annexed thereto. No. 1035, C. and W. C. 27th January 1837, ... II. 273

23. The statement made by a prisoner on oath under a conditional pardon tendered to him under the provisions of Regulation X. 1824, as modified by Section 7, Regulation I. 1829, cannot be received as evidence against him, in the event of his being committed for trial for the original offence, under the orders of the session judge, on the ground of his having failed to fulfil the conditions under which the pardon was tendered to him. No. 1041, C. C. 5th August, W. C. 16th September 1838, ... II. 277

24. Under the provisions of Act XIX. 1837, the conviction of a person for a criminal offence cannot be considered as constituting a bar to his giving evidence against his supposed accomplices in the same offence; it resting of course with the presiding officer, as in all other cases, to judge of the credibility of such testimony, or in other words to receive it *quantum valeat*. No. 1117, W. C. 8th December 1837, C. C. 3d January 1838, ... II. 330

No. 1173, C. C. 14th September, W. C. 24th August 1838, ... III. 28

25. The sillah judge having struck a case off the file because the witnesses of the plaintiff, who had been duly summoned, failed to attend, the Courts of Sudder Dewanny Adawlut held that it was incumbent on the judge, under the spirit of Section 6, Regulation IV. 1793, to call on the plaintiff's counsel to satisfy him by evidence on oath that the evidence of those witnesses was material to the cause, before he proceeded to strike the case off the file. No. 1126, C. and W. C. 26th January 1838, ... III. 2

26. A prisoner admitted as an approver or evidence against his accomplices, should be examined by the magistrate *de novo*, instead of being merely sworn to the truth of the statement made by him in the character of a defendant. No. 1137, C. C. 9th March, W. C. 24th March 1838, ... III. 8

27. The evidence of the mother of an illegitimate child against the alleged father is *prima facie* good as far as it goes; but should be sifted and weighed as any other testimony, and tested as far as practicable by any circumstantial evidence that may offer. The result must depend on the belief or otherwise reposed in it by the magistrate. No. 1163, C. C. 3d August, W. C. 13th July 1838, ... III. 20

28. A prisoner on trial before the session court having objected to examine his own witness, alleging that he had been tampered with by the prosecutor, it was held to be exceptionable in the session judge to examine him against the prisoner. No. 1203, C. C. 15th March, W. C. 30th March 1839, ... III. 44

WIVES.

See "Maintenance of Wives and Children," *passim*.

WORKMEN.

1. The rules contained in Clause 3, Section 6, Regulation VII. 1819, is not applicable to European British subjects; consequently a magistrate [even though a justice of the peace] cannot compel an European British subject to pay the wages of a servant. No. 340, 25th May 1821, ... I. 139

2. Yet the magistrate may, at the suit of an European British subject, proceed against native servants or workmen quitting their employment, &c. No. 345, 20th July 1821, ... I. 142

3. The sentence of two months' imprisonment in case of workmen neglecting to finish their work is intended as a punishment for wilful neglect to perform the work undertaken, and not as a means for compelling the performance of it: consequently the magis-

trate is not competent to repeat the punishment of two months' imprisonment, or to take any further measure towards compelling the actual performance of the work engaged for. No. 384, 29th April 1825,... I. 159

4. The complaints of *beoparees* for arrears of wages while in the employ of Government, are not cognizable by the magistrate. They should be referred to the civil court for the adjustment of their claims for the hire of their huckeries and bullocks. No. 560, 11th June 1830, ... I. 235

5. A complaint for the recovery of wages should be made immediately on the occurrence of the cause of complaint. A case therefore in which nearly two years and a half had elapsed was not considered cognizable by the magistrate. No. 582, 7th January 1831, ... I. 244

6. The complaint in such cases must be preferred on oath as all other complaints in a criminal court. No. 582, 7th January 1831,..... I. 244

7. A magistrate cannot compel the payment of the wages of a mokhtar under Section 6, Regulation VII. 1819, those provisions applying only to workmen and domestic servants. No. 770, C. C. 15th March, W. C. 12th April 1833,..... II. 88

8. The provisions of Regulation VII. 1819 do not limit the sum which may be recovered as wages in a criminal court, and the servant may sue to recover wages for any period not exceeding one year. No. 913, C. C. 31st October, W. C. 28th November 1834, ... II. 188

9. The *mohurrir* or *gomashteh* of an indigo planter superintending an out-factory, cannot be considered as a domestic servant or workman: consequently a magistrate is not competent to apprehend and compel to return to his duty such a person, who may have absconded from his employment. No. 924, C. C. 26th December 1834, W. C. 23d January 1835, ... II. 195

10. When a party against whom an award of wages to domestics may be given, does not immediately pay the same, the magistrate should proceed to levy the amount by distress and sale of the defendant's personal property. No. 1053, C. C. 14th October, W. C. 4th November 1836, ... II. 285

11. A contract between A and B on the security of C and D to furnish a boat to convey certain goods of A to a certain place on the river, is not cognizable by the magistrate; the contract being of a civil nature, and security being taken for the performance of it. The person aggrieved must therefore seek his remedy in the civil court. No. 1085, W. C. 14th April, C. C. 3d May 1837,..... II. 305

12. The summary award of the criminal authorities under Section 6, Regulation VII. 1819, is not subsidiary to a suit in the civil court. The civil court has therefore no power to issue an injunction to a magistrate for the purpose of stopping the execution of his order. No. 1158, C. C. 13th July, W. C. 22d June 1838,..... III. 88

13. There must be a stipulated term of service or a contract for the performance of a specific work to render Section 5, Regulation VII. 1819, applicable to the case of mistrees, moochees, and other artisans receiving advances and refusing to work. Such cases may be prosecuted either in the district in which the agreement was executed, or in that in which the defendant resides. No. 1329, C. C. 18th March, W. C. 27th May 1842, ... III. 87

WOUNDED PERSONS.

See "Commitment," No 5.

WRIT OF ASSISTANCE.

See "Assistance, Writ of."

WUQF.

1. Wuqf property cannot be alienated or divested from the purposes for which such property was intended. No. 1166, C. C. 17th August, W. C. 20th July 1838, ... III. 24

ZILLAH AND CITY COURTS.

1. The duties in regard to the submission of appeals to the Sudder Dewanny Adawlut, heretofore performed by the provincial courts, should, after the extension of Regulation V. 1831 to the district, be performed by the zillah or city judge. No. 681, 9th March 1832, ... II. 37

2. There is no objection to a judge pointing out officially to a party in a suit the proper mode to be followed, when he sees occasion to do so. [*But see the Circular Order of the 13th September* 1843.] No. 705, 20th July 1832, ... II. 49

3. A judge may decide a lakheraje suit upon which he has himself reported under Section 30, Regulation II. 1819, as a collector. No. 779, C. C. 12th April, W. C. 10th May 1833, ... II. 93

4. The order of a zillah judge dismissing a vakeel of a moonsiff's court is final and not open to appeal to the Sudder Dewanny Adawlut. No. 846, C. C. 6th December, W. C. 27th December 1833, ... II. 142

5. A zillah judge is not positively required to attest an English power of attorney to be exhibited in the Supreme Court, and is authorised to decline, if his doing so would entail the necessity of his attendance before that Court to verify his signature, and thus cause interruption in the discharge of his regular duty. No. 960, C. & W. C. 19th June 1835, ... II. 218

6. Though Clause 7, Section 45, Regulation XXIII. 1814, is applicable only to the case of debtors confined in execution of decrees, a judge may exercise his discretion in releasing a prisoner confined under the orders of a civil court until he pay a fine imposed upon him. No. 964, W. C. 10th July, C. C. 31st July 1835, ... II. 220

7. The civil courts have no power of summary interference with succession to landed property, except on emergent occasions. [*This summary interference has been authorized by Acts XIX. and XX.* 1841.] No. 1008, W. C. 19th May, C. C. 17th June 1836, ... II. 252

8. The judge cannot issue an injunction to a magistrate to stop execution of his summary award of wages, such orders not being subsidiary to a civil suit. No. 1158, C. C. 13th July, W. C. 22d June 1838, ... III. 17

9. A civil judge cannot call upon a magistrate to enforce his orders if resisted. No. 1209, C. C. 12th August, W. C. 3d May 1839, ... III. 49

10. The civil courts cannot interfere with the estate of a lunatic consisting only of personal property. No. 1311, W. C. 15th October, C. C. 5th November 1841, ... III. 83

ZUMEENDARS.

1. Section 2, Regulation XXVII. 1795, is applicable in bar of claims preferred by *zumeendars* under Clause 6, Section 3, Regulation I. 1795, for the recovery of their estates from farmers, if the refusal of the *zumeendar* to pay the assessment required of them be established: but the case of actual refusal only being provided for by Section 2, Regulation XXVII. 1795, it cannot be pleaded in any other case; and if the plea be offered by a farmer to prevent a zumeendar being put in possession of his estate under Clause 6, Section 3, Regulation I. 1795, the proof of the plea must be on the farmer. No. 29, 30th May 1807, ... I. 8

2. A zumeendar may oust a defaulting farmer from his farm at the end of the year for which an arrear of rent may be due, if he shall not discharge the same on demand: and this without application to the courts of justice, provided no violence be used, so as to bring the case within the provisions of Regulation XLIX. 1793. [*See Section* 18, *Regulation VIII.* 1819.] No. 42, 17th September 1808,... I. 10

3. The estates of persons who obtained decrees establishing their proprietory right in *malgoozaree* lands, but who are excluded from possession of their estates by the operation of Clause 3, Section 53, Regulation XXVII. 1803, are not liable to be disposed of at public sale in liquidation of arrears of public revenue, the general principle of Clause 1, Section 14, Regulation IV. 1803, not being applicable to persons standing in the predicament prescribed. No. 93, 26th September 1811, ... I. 23

4. The Court expressed their inability to define exactly and generally what degree of power it was intended, by the use of the term "compulsion" in the regulation, [*Section* 15, *Regulation VII.* 1799,] to confer on the landlords in enforcing the attendance of their tenants. The magistrate was directed, in the event of a complaint being preferred of the abuse of that power, to decide from the evidence whether any unnecessary or unauthorised degree of severity had been exercised or not, his decision being of course open to revision by the court of circuit. No. 382, 22d April 1825, ... I. 158

5. In reply to a question whether landholders in the district of Benares are liable to fine by the magistrate in cases of theft of property at night within their villages, the magistrate was informed that they are only liable to fine when they willingly neglect to apprehend, and deliver over to the police officers, persons whom the village chowkeydars are required to apprehend by Section 14, Regulation XVII. 1795, or when they make any other default of the nature described. No. 422, 23d June 1826, ... I. 177

6. In the case of alleged negligence in apprehending an offender on the part of the proprietor of a village, the provisions of Regulation XXXV. 1803, are applicable, although no charge had been preferred by a private prosecutor: the magistrate being competent to proceed against the zumeendar for such neglect, whatever may be the means by which he has acquired the information to criminate him. No. 889, C. C. 4th July, W. C. 1st August 1834, ... II. 176

7 *Zumeendars* cannot be prohibited from levying *choongee* in markets held within the precincts of their estates. [*See the Construction itself which was given on a reference from the Joint Magistrate of Shajehanpore in the N. Western Provinces.*] No. 973, W. C. 7th August, C. C. 25th September 1835, ... II. 224

8. The fine leviable under Section 21, Regulation XII. 1807, on a zumeendar for neglect in furnishing lists of the village watchmen on the estate, is commutable, if not paid, to imprisonment. No. 1150, C. C. 27th April, W. C. 11th May 1838, ... III. 14

9. If the zumeendar be an absentee, the actual manager of the estate is the responsible person, and should be proceeded against in default of compliance with the requisitions of Section 21, Regulation XII. 1807. No. 1150, C. C. 27th April, W. C. 11th May 1838, ... III. 14

10. A magistrate is not authorized to call upon a zumeendar to provide a building for the residence of such police officers as may be stationed on his estate under Section 8, Regulation XVII. 1816. The appeal from the magistrate's order in such a case lies to the session judge. No. 1247, C. C. 6th September, W. C. 27th September 1838, ... III. 64

11. With reference to a remark of a session judge, that chowkeydars are to be considered in the light of the zumeendar's servants, his attention was called to Clause 2, Section 21, Regulation XX. 1817, which declares the village watchmen to be subject to the orders of the police daroghs. No. 1281, C. and W. C. 17th July 1840, ... III. 75

12. The zumeendars themselves are obliged under certain prescribed penalties to give information

of dacoitees, murders, and other crimes committed within their estates, which may come to their knowledge—it is not sufficient that the same information is received from the chowkeydars. This information should generally be in writing; but if the zumeendar has any secret information to give, he may wait on the magistrate personally for the purpose, and it is optional to send a servant to the magistrate or the daroga if he see fit. No. 1281, C. and W. C. 17th July 1840, ... III. 75

13. No private engagement between a zumeendar and another person, can absolve the former from the performance of such acts as he is bound by the regulations of Government to perform. No. 1298, C. C. 28th May, W. C. 22d June 1841,..... III. 79

FINIS.

Printed at the Bengal Military Orphan Press, by G. H. Huttmann.

INDEX

OF THE

SECTIONS AND CLAUSES OF REGULATIONS CONSTRUED.

Year.	Reg.	Sec.	Cl.	NUMBER OF CONSTRUCTIONS. Vol. I.	Vol. II.	Vol. III.
1793	I.	5		29.		
—	III.			346.		
—	—	2		75.		
—	—	7		....	705, 807.	
—	—	8		73, 148, 351, 367, 439,..... ...	739, 797, 866, 871, 956, 969.	
—	—	10		440.		
—	—	12		....	1096.	
—	—	13		....	706.	
—	—	14		3, 136, 495,.....	813, 1036.	
—	—	16		.....	999.	
—	—	17		....	721, 991.	
—	—	19		....	703.	
—	—	21		176, ...	716.	
—	IV.			346.		
—	—	2		429.		
—	—	6		78, 139, 159, 172, 270, 465, ...	698, 757,.....	1126.
—	—			487.		
—	—	7		71, 106, 129.		
—	—	8		21, 77, 110, 575.		
—	—	10		.....	938, 870.	
—	—	11		376.		
—	—	13		11, 12.		
—	—	15		138, 424.		
—	—	16		37.		
—	—	21		.....	1096.	
—	—	22		2, ...	780.	
—	—	24		....	780.	
—	—	25		.....	765, 780,.....	1214.
—	V.	7		473.		
—	—	10		150.		
—	—	13		.....	699.	
—	—	18		....	870.	
—	—	21		.....	938.	
—	—	23		.....	780.	
—	—	25		....	780.	
—	—	26		.....	780.	
—	—	28		48.		
—	VI.	5		.....	817.	
—	VII.	9		99, 417.		
—	—	10		110.		
—	—	12		38.		
—	—	32		18.		
—	VIII.	16		45.		
—	—	25		142.		
—	—	40		22.		
—	—	51	2	125, 480.		

Year.	Reg.	Sec.	Cl.	NUMBER OF CONSTRUCTIONS. Vol I	Vol II	Vol III
1793	VIII.	58		126		
		59		67		
		63	1	67 480		
	IX.	4		616	725	
		5		389 666,	817	
		8		94		1330 1361
		9				1310
		10		94 459	754	
		16		204		
		17		145 235		
		40		102		
		47		123	650 658 847	1256
		49		81 200 256		
		53		484		
		54		137		
	X.			335		
	XIII.			54 58 237		
		8		520		
		9			731 737	
			8	53 231		
		11		539		
	XIV.	15			808	
		16		198 386		
		19			808	
		21			808	
		36		364		
	XV.			331 487		
		6		359		
		10		15 277	830	
		11		277	830	
	XVI.			1 87 253 286		
		3			936	
		5		395		
	XVII.			33 61 313		
		6		327		
		19		93 309 316		
		20		29		
	XIX.			340		
		4		16		
	XXII.	10		161		
		16		271	851	
	XXIV.			230		
	XXVIII.	2			786	
		3		174 493		
		7		56, 493		
	XXXI.	3	6	267		
			7	240		
	XXXIV.			32		
	XXXVI.				905	1351
		2		135		
		7			1015	
		9		226		1216
		11		493		
		15		5 288		
	XXXVIII.			449		
		3		55 397		
	XXXIX.			14, 486,	707, 1042	
	XL.			103		
		8		64		

Year	Reg	Sec	Cl	NUMBER OF CONSTRUCTIONS. Vol I	Vol II	Vol III
1793	XI	9	11	87		
—	—	13	—	87		
—	—	14	—	87		
—	XLV	—	—	749 601	921	
—	—	2	—		887	
—	—	12	—			1194.
—	—	17	—	149		
—	XLVI	—	—	186		
—	—	2	—	34		
—	—	3	—	9 11 12, 34, 57		
—	XLVII	2	—	363		
—	XLIX.	—	—	17 28 39 42 107 266 311 475 492, 568,	894, 995	1202
—	—	3	—	26 159		
—	—	4	—	121		
—	—	6	—	134 342		
1794	I	—	—	41		
—	III	16	—	282		
—	—	19	—	282		
—	IV	5	—	267		
—	—	7	—	274		
—	VIII	3	—	87		
—	—	8	—	87		
1795	I	3	6	29		
—	II	14	5	67		
—	VI	23	—	198, 386		
—	—	32	—			1222
—	—	42	—	364 414		
—	VII.	—	—	See Regulation III 1793		
—	—	7	—		871	
—	VIII.	—	—	See Regulation IV 1793		
—	IX.	—	—	See Regulation V 1793		
—	XII	—	—	See Regulation XIII 1794		
—	XIII	—	—	See Regulation VII 1795		
—	XIV	—	—	See Regulation XI IX 1795.		
—	XV	—	—	See Regulation XVI 1797		
—	XVI	—	—	See Regulation IX 1793		
—	XVII	10	—	160		
—	—	14	—	422		
—	—	28	—	124		
—	XX	13	—			1222
—	XXII	35	2		980	
—	—	—	3		980	
—	—	—	5		980	
—	—	—	10		942	
—	XXIII	—	—	See Regulation XI VI 1797		
—	XXIV	—	—	See Regulation XXVIII 1797		
—	XXV	—	—	See Regulation XLVII 1793		
—	XXVII.	2	—	29		
—	XXVIII	—	—	See Regulation XXXVI 1793		
—	XXXI	—	—	See Regulation XL 1793		
—	XXXIV	—	—	230		
—	—	2	—		988	
—	XXXV	—	—	23 61 313		
—	XXXVIII	9	—	165		
—	XLV	—	—	See Regulation XVII 1793		
—	—	6	—	327		
—	—	17	—	23		

Year.	Reg.	Sec.	Cl	NUMBER OF CONSTRUCTIONS		
				Vol I	Vol II	Vol. III
1795	XLV.	18		23 309 316		
—	XLVII.	—	—	See Regulation XXXIV 1793		
—	XLVIII.	—	—	See Regulation XXXVIII 1793		
—	XLIX.	—	—	See Regulation XXXIX 1793		
—	LXI.	2	—	294		
—	—	3	—	294		
—	—	4	—	294		
—	—	5	—	294		
1796	II.	2	—	20		
—	X.	2	—	100 273 323 344 390 433 437 479 536		
—	—	3	—	97 204 286		1124.
—	XI.	—	—			
—	—	2	2		625	
—	—	4	—		619	
—	XIII.	3	—		715 1096	1138
1797	II.	3	1	422		
—	III.	7	—	175		
—	IV.	7	2	204		
—	—	8	—	153		
—	—	11	—	134		
—	VI.	3	—	187		
—	—	16	—	185		
—	—	18	1	25		
—	—	—	2	25		
—	—	27	—	156		
—	XI.	2	—	56 174		
—	XIII.	2	—		850	
—	XIV.	—	—		931	
—	—	3	—	388		
—	—	8	—	367 373 505 590		
—	XVI.	4	—		659	
1798	I.	2	—	181 277 439	830.	
—	II.	10	—	360		
—	—	18	—		709	
—	V.	4	—	93		
—	—	7	—	17 265 266 281 311 561		1202
1799	II.	2	—	147		
—	—	6	—	167 206		
—	V.	—	—		1008	
—	—	2	—		963	
—	—	3	—	310	963	
—	—	4	—	310	651	
—	—	7	—	541	927	
—	VII.	—	—	4 33 130 318 337 496 519 531 575 599		
—	—	9	—	23 548		
—	—	13	—	109 110 322 480		
—	—	15	—	30 35 41 42 96 220 254 265 266 456	860	
—	—	—	4	278 280		
—	—	—	5	128		
—	—	—	6	128		
—	—	—	7	113 128 129 502		
—	—	—	8	382 394		
—	—	18	—	100 234		
—	—	26	—	335		
—	—	29	3	291		

Year.	Reg.	Sec.	Cl.	NUMBER OF CONSTRUCTIONS. Vol. I.	Vol. II.	Vol. III.
1799	VII.	29	5	10, 45.		
—	VIII.	3	—	.....	985.	
—	X.	2	—	222.		
1800	I.	—	—	310, 596, ...	{ 637, 651, 654, 663, 666, 682, 726, 912.	
—	—	1	—	398.		
—	—	4	—	.....	949.	
—	—	6	—	142.		
—	V.	—	—	{ 4, 33, 130, 313, 337, 496, 519, 575, 599.		
—	—	9	—	23, 348.		
—	—	13	—	103, 110, 322, 480		
—	—	14	—	{ 30, 35, 41, 42, 96, 220, 254, 265, 266, 456.		
—	—	—	4	378, 380.		
—	—	—	5	128		
—	—	—	6	126.		
—	—	—	7	113, 128, 129, 502.		
—	—	—	8	382, 394.		
—	—	17	—	100, 254.		
—	—	26	—	45.		
—	—	27	—	282.		
—	VI.	27	—	43.		
—	—	28	—	46.		
—	VII.	5	1	185.		
—	—	6	2	6.		
—	—	—	3	6.		
1801	I.	10	—	291.		
—	III.	—	—	139, 454, ...	704, 820, ...	1221.
—	VI.	7	1	296.		
—	—	—	6	8.		
—	—	32	—	224.		
1802	III.	5	—	109.		
—	—	6	—	9, 11, 12.		
1803	II.	2	—	75.		
—	—	4	—	.....	807.	
—	—	5	—	73, 110, 148, 351, 367, 439, ...	{ 739, 797, 866, 871, 956, 969.	
—	—	8	—	162, ...	785, 843.	
—	—	9	—	.....	705, 1096.	
—	—	10	—	.....	870, 999.	
—	—	12	—	.....	721.	
—	—	17	—	176, ...	716.	
—	—	18	3	5, 136, 478, 495, ...	813, 1086.	
—	—	19	—	.....	706.	
—	—	20	—	.....	705.	
—	III.	2	—	429.		
—	—	7	—	{ 78, 139, 159, 172, 270, 465, 487, ...	698, 757, ...	1126.
—	—	9	—	71, 106, 129.		
—	—	10	—	21, 77, 575.		
—	—	12	—	.....	870.	
—	—	13	—	375.		
—	—	15	—	11.		
—	—	16	—	424, ...	1008.	
—	—	—	1	138.		
—	—	—	2	.....	983.	
—	—	—	3	310, ...	983.	

Year.	Reg.	Sec.	Cl.	NUMBER OF CONSTRUCTIONS. Vol. I.	Vol. II.	Vol. III
1803	III.	16	4	310,	651.	
—	—	—	7	541,	927.	
—	—	17	—	37.		
—	—	18	1	138.		
—	—	22	—		1096.	
—	—	23	—	2,	780.	
—	—	25	1		780.	
—	—	26	—		765, 780,	1214.
—	IV.	7	—	473.		
—	—	10	—	150.		
—	—	12	6	369.		
—	—	13	—		699.	
—	—	14	1	93.		
—	—	16	—		870.	
—	—	23	—		780.	
—	—	25	—		780.	
—	—	26	—		780.	
—	—	28	—	48.		
—	—	35	—		715, 1096.	
—	V.	10	7		709.	
—	—	12	—			1136.
—	—	14	1	93.		
—	—	33	—		659.	
—	VI.	4	—	616,	725.	
—	—	5	—	389, 605.		
—	—	8	—	94.		
—	—	10	—	94, 459,	754.	
—	—	16	—	204.		
—	—	17	—	143.		
—	—	19	—	20.		
—	—	31	—	79, 388.		
—	VII.	11	—	102.		
—	—	15	1	123,	650, 658, 847,	1256.
—	—	17	—	81, 200, 256.		
—	—	18	1	204.		
—	—	23	—	137.		
—	—	24	—	158.		
—	—	35	—	134.		
—	—	39	3	367, 373, 505, 590.		
—	—	41	—	222.		
—	VIII.	2	2	270.		
—	—	23	—	187, 206.		
—	—	25	1	76.		
—	—	—	2	79, 110, 270, 457.		
—	—	—	3	110.		
—	X.	—	—	92.		
—	—	7	—	417.		
—	—	9	—	110.		
—	—	11	—	58.		
—	—	30	—	18.		
—	XII.	—	—	54, 58, 237.		
—	—	11	—	520.		
—	—	13	—		731, 737.	
—	—	—	8	53, 231.		
—	—	14	—	539.		
—	—	18	—		850.	
—	XIV.	—	—	186.		
—	—	2	—	34.		

Year.	Reg.	Sec.	Cl.	NUMBER OF CONSTRUCTIONS. Vol. I.	Vol. II.	Vol. III.
1803	XIV.	3	8	9, 11, 12, 54, 57.		
—	XV.	7	—	175.		
—	XVI.	6	—	64.		
—	—	7	11	87.		
—	—	11	—	87.		
—	—	12	—	87.		
—	—	26	—	103.		
—	XVII.	2	—	135.		
—	—	7	—	.....	1015.	
—	—	9	—	226, ...	.....	1218.
—	—	11	—	428.		
—	—	15	—	5, 288.		
—	XVIII.	2	—	.....	786.	
—	—	3	—	174, 493.		
—	—	7	—	56, 493.		
—	XIX.	—	—	440.		
—	—	3	—	55, 397.		
—	XXI.	—	—	1, 37, 253, 286.		
—	—	5	—	395.		
—	XXII.	2	—	100, 273, 323, 344, 390, 433, 437, 479, 536.		
—	—	3	—	97, 204, 286.		
—	XXIV.	—	—	230.		
—	—	2	—	343.		
—	—	16	—	343.		
—	XXV.	33	—	29.		
—	XXVI.	—	—	470.		
—	—	9	—	291.		
—	—	11	—	10, 45.		
—	—	25	—	.....	.....	1222.
—	—	26	—	199.		
—	XXVII.	11	—	315.		
—	—	14	2	316.		
—	—	16	—	330, 333.	855.	
—	—	19	—	333.		
—	—	23	—	198, 386.	808.	
—	—	26	—	.....	808.	
—	—	28	—	.....	808.	
—	—	39	—	364, 414.		
—	—	53	3	93.		
—	XXVIII.	—	—	33, 61, 313, 323, 519.		
—	—	6	—	327.		
—	—	17	1	23, 309, 316.		
—	—	—	2	23, 348.		
—	—	18	—	23.		
—	—	30	—	103, 322, 480.		
—	—	32	—	30, 35, 41, 42, 96, 220, 254, 265, 266, 456.		
—	—	—	4	278, 380.		
—	—	—	5	128.		
—	—	—	6	128.		
—	—	—	7	113, 128, 129, 502.		
—	—	—	8	382, 394.		
—	—	35	—	100, 254.		
—	XXX.	2	—	126.		
—	—	30	—	110.		
—	XXXI.	—	—	346.		
—	—	4	—	16.		

Year.	Reg.	Sec.	Cl.	NUMBER OF CONSTRUCTIONS. Vol. I.	Vol. II.	Vol. III.
1803	XXXII.			17, 20, 28, 39, 42, 167, 266 311, 475, 482, 568, ...	894, 995,.....	1202.
		3		158.		
		4		121.		
		6		132, 342.		
	XXXIV.			331, 497.		
		5		359.		
		9		15, 277, ...	850.	
		10		277, ...	850.	
		12		131, 277, 339,.....	850.	
	XXXV.	3	3	422.		
			4	.....	889.	
		10		100.		
		16		271.		
		26		.....	851.	
	XXXVII.	3	5	267.		
			7	240.		
	XL.			82.		
		30		43.		
	XLIII.	3		186.		
		20		156.		
	XLVI.			14, 436, ...	707.	
	XLIX.	2		7.		
			7	13.		
		3		7.		
		6	2	87.		
		24		109.		
			1	100.		
	L.	1		78.		
		2		457.		
			1	74, ...	698.	
			2	110, 457.		
			3	110.		
	LII.			335.		
		5	3	142.		
	LIII.			558.		
		2		.....	1002.	
			2	79, 270.		
			6	286.		
			7	104, 353, ...	755.	
		3	1	238, ...	750.	
		4	4	.....	750.	
		5	2	287.		
		6	2	484.		
		7	2	236.		
		8	5	.....	643.	
		9		47.		
			1	161.		
		11		173.		
1804	III.	2	2	.....	625.	
		2 & 3		.....	.....	1124.
		4		.....	619, ...	1124.
			4	414.		
			5	414.		
	V.			81.		
		10		49.		
1805	II.			432, 478.		
		2		.....	942, ...	1348.

Year.	Reg.	Sec.	Cl.	NUMBER OF CONSTRUCTIONS. Vol. I.	Vol. II.	Vol. III.
1805	II.	3			942.	
—	—	—	4		965.	
—	—	4		565.		
—	—	—	1	27, 316, 467.		
—	—	6	—	316.		
—	—	10	—	551.		
—	—	13	—	191.		
—	—	14	2	56.		
—	—	—	3	19, 305.		
—	VII.	29	8		651.	
—	—	—	9		651.	
—	—	—	10		651.	
—	—	—	11		651.	
—	—	—	12		651.	
—	—	—	13		651.	
—	—	—	14		651.	
—	VIII.	14	3	147.		
—	—	29	8	310, 396, 596,	637, 654, 663, 666, 682, 720.	
—	—	—	9	310, 596,	637, 654, 663, 666, 682, 720.	
—	—	—	10	310, 596,	637, 654, 663, 666, 682, 720.	
—	—	—	11	310, 596,	637, 654, 663, 666, 682, 720.	
—	—	—	12	310, 596,	637, 654, 663, 666, 682, 720.	
—	—	—	13	142, 310, 596,	637, 654, 663, 666, 682, 720.	
—	—	—	14	310, 596,	637, 654, 663, 666, 682, 720.	
—	IX.	23	—	29.		
—	XII.	12	—	25.		
—	XIV.	6	—	59, 122.		
—	XVII.	2	—	142.		
1806	II.	2	—	80, 512,	721, 854.	
—	—	—	3			1225.
—	—	3	—	375, 406,	854.	
—	—	4	—		745, 885, 963.	
—	—	5	—	190, 588,	665, 743, 916.	
—	—	8	—		1024.	
—	—	10	—	44, 569,	732.	
—	—	11	—	24, 60, 86, 95, 110, 177, 302, 308, 309, 319, 328, 372,	784, 1062, 1086, 1108,	1196.
—	—	12	—	21.		
—	X.	10	—		731.	
—	XI.	—	—	314.		
—	—	3	—		1049.	
—	—	8	—			1188.
—	—	14	—	40.		
—	XV.	6	—		983.	
—	XVII.	—	—	131, 370,	672.	
—	—	7	—	277,	974.	
—	—	8	—	80, 105, 131, 263,	630, 644, 898,	1140, 1179.
1807	I.	4	2	306.		
—	—	7	—	280.		
—	II.	—	—	195, 233,	656.	
—	—	3	—	52.		

Year.	Reg.	Sec.	Cl.	NUMBER OF CONSTRUCTIONS. Vol. I.	Vol. II.	Vol. III.
1807	II.	3	1		638.	
		4	3		1099.	
			4		627.	
	IX.			603.		
		3		404,	620, 631.	
		4		512,	642, 1100.	
		5			642.	
		6		205, 512,	642.	
		9	1	617.		
			2	141.		
		17		101, 189.		
		19		63, 79, 85, 94, 206, 237, 244, 259, 388, 423, 459, 610,	664, 774,	1156.
		20		191, 516, 595,	686.	
		21		612,	722.	
		22		235, 357,	1104,	1169.
		23		114, 120, 167, 283, 340, 382, 489,	625, 657, 790.	
	XII.	21				1150.
	XIV.	8		49.		
		20		422.		
1808	IX.	3		117, 127.		
		5		435.		
		13		486,	889.	
		14		46, 118,	889.	
	X.			82, 279.		
		6		98,	746.	
		7		141,	746.	
	XIII.			72.		
		2		69.		
		3		227.		
		11		198, 331.		
			2	90, 636,	1077.	
			3		646.	
		12		106, 272, 284.		
		13			1014.	
1809	V.				703, 926.	
	VII.	7		188.		
	VIII.			62.		
		3		306.		
		5		49, 88, 91, 306.		
			2	678,	618.	
			5	192, 244.		
		7		51, 344.		
			2		618.	
		9		49,	940.	
		11		50.		
	IX.	9		168.		
1810	VI.	3			889.	
		4		63,	889.	
		5		63.		
	VIII.			82, 279.		
	IX.	31		84.		
		38		205, 476.		
		39		76, 205,	973.	
	XIII.	2	3	83, 90.		
			4	70, 497,	779.	
		4	2	280.		
			3	262.		

Year.	Reg.	Sec.	Cl.	NUMBER OF CONSTRUCTIONS. Vol. I.	Vol. II.	Vol. III.
1810	XIII.	4	4	66, 74.		
—	—	6	3	538.		
—	—	9	3	68.		
—	—	11	—	164, ...	977.	
—	—	—	1	208.		
—	XIV.	3	—	350.		
—	—	4	—	350.		
—	—	5	—	152.		
—	XVI.	9	—	.....	858.	
—	—	11	—	210, 232.		
—	—	16	—	229.		
—	—	18	—	229.		
—	XIX.	—	—	.....	.....	1166.
—	XX.	—	—	.....	1119.	
—	—	15	—	392.		
—	—	16	—	392.		
—	—	17	—	392.		
—	—	18	—	.....	760, 1044.	
—	—	22	—	498.		
1811	I.	—	—	287.		
—	—	2	2	144.		
—	—	3	1	299.		
—	—	—	2	299.		
—	—	—	3	144, 218, 219.		
—	—	6	—	484.		
—	—	7	—	133, 217.		
—	—	8	—	133.		
—	—	9	1	89.		
—	—	—	2	89.		
—	VII.	2	3	149.		
—	—	3	—	.....	.....	1199, 1205.
—	—	5	—	94, 233, 459, 528, 530, 610, ...	.....	1180, 1208, 1220.
—	X.	—	—	90.		
1812	I.	22	—	317.		
—	III.	2	—	221.		
—	—	4	—	.....	889.	
—	—	6	—	151, 193.		
—	—	9	3, 4 & 5	.....	.....	1352.
—	IV.	—	—	377.		
—	V.	—	—	574, 581, 591.		
—	—	9	—	234, 255, 257.		
—	—	10	—	234, 255, 257.		
—	—	14	—	.....	962.	
—	—	15	—	234, 255, 348, 421, 503.		
—	—	16	—	.....	.....	1255.
—	—	17	—	327, 467.		
—	—	20	—	467.		
—	—	21	—	108, 112, 116, 126, 165, 166, 203.		
—	—	26	—	118, 142, 449, ...	717.	
—	—	27	—	449.		
—	XVI.	—	—	.....	932.	
—	XX.	—	—	.....	905.	
—	—	2	—	119, ...	.....	1218.
—	—	7	—	.....	732, 812.	
—	—	10	—	.....	732.	
1813	II.	—	—	543.		
—	—	2	—	.....	903, ...	1200.

Year.	Reg.	Sec.	Cl.	NUMBER OF CONSTRUCTIONS. Vol. I.	Vol. II.	Vol. III.
1813	VI.			286, 308, 472, 475,	875.	
—		2		253,		1153.
—		3		571,		1153, 1342.
—			2	295.		
—		5		140, 284.		
—			1	167, 191, 311, 444.		
—			3	213, 414.		
—	VIII.				703.	
—	X.			32.		
—		22		252.		
—		32				1345.
—	XIII.	7		215.		
1814	I.	16		212.		
—				156, 164, 169.		
—		2		187.		
—		9		292, 312, 324, 325, 392, 412.		
—		11		154, 185, 187, 207, 274, 275, 312, 324, 325, 341, 409, 412, 431.		
—		12		321.		
—		13		163, 180, 187.		
—		14		180, 187, 274.		
—			1	402.		
—			4	181.		
—		15		145, 146, 179, 183, 187, 223, 242, 243, 289.		
—		16		145, 182, 183, 187, 223, 242, 243.		
—		17		170, 183, 187, 202, 223, 242, 243.		
—		18		182, 188, 243, 247, 261.		
—		19		171, 178, 183, 184, 207, 243, 412.		
—	II.				1116.	
—		3	1	410.		
—	VIII.				889.	
—	XI.			287.		
—		2	2	299.		
—			3	299.		
—			4	218, 299.		
—			5	299.		
—	XII.				788, 827.	
—	XV.			307.		
—		2	1	360.		
—			3		1011.	
—	XXIII.			250, 322, 481.		
—		8	2	514.		
—		9			667.	
—		10		64.		
—			2		781, 1069.	
—		13		196, 332,		1373.
—			1	219, 462, 480.		
—			2	219,		1373.
—			3	219.		
—		15	3		846.	
—			4		990.	
—		19		400.		
—		21	2		775.	
—		22	3		775.	

Year.	Reg.	Sec.	Cl.	NUMBER OF CONSTRUCTIONS. Vol. I.	Vol. II.	Vol. III.
1814	XXIII.	23			761, 772.	
—	—	25	4	276.		
—	—	27			859.	
—	—	—	1		870,	1221.
—	—	—	2		870, 873,	1238.
—	—	29		400.		
—	—	31			701.	
—	—	40			966.	
—	—	42			701, 966.	
—	—	45		239.		
—	—	—	4	284.		
—	—	—	6	284,	979.	
—	—	—	7	308, 326, 328, 359,	964.	
—	—	46		477.		
—	—	—	5	284, 479.		
—	—	47			833.	
—	—	49	2	212, 260		
—	—	52		509, 587,	714, 824, 861.	
—	—	54			714.	
—	—	59			861.	
—	—	63		514.		
—	—	64		269.		
—	—	68		310.		
—	—	72			862.	
—	—	73		239, 477.		
—	—	74			1020.	
—	—	75	3	223.		
—	—	76			761.	
—	—	—	1		815.	
—	—	—	2		815.	
—	—	—	3		815.	
—	—	—	4		815.	
—	—	—	6		815.	
—	XXIV.	—		322.		
—	—	6	2	273.		
—	—	8		251.		
—	—	—	2	242.		
—	—	—	7	245.		
—	—	9		251, 268.		
—	—	—	4	223.		
—	—	—	6	223, 256.		
—	—	10		251.		
—	—	11		251.		
—	—	12		251, 268, 285.		
—	—	—	3	194.		
—	XXV.	3		227.		
—	—	5		227, 245.		
—	—	8		261.		
—	—	9		205, 262, 263.		
—	—	11		290.		
—	—	12		202, 235, 290, 295, 337.		
—	—	—	1	437.		
—	—	—	3	385.		
—	—	13		205.		
—	—	14		205.		
—	—	15				1228.
—	XXVI.	2		289,		1139.
—	—	—	1	246, 256.		

Year.	Reg.	Sec.	Cl.	NUMBER OF CONSTRUCTIONS. Vol. I.	Vol. II.	Vol. III.
1814	XXVI.	2	2	499.		
—	—	—	3	248.		
—	—	—	4	536.		
—	—	—	6	245, 254,	641.	
—	—	3	—	551, 614,	672.	
—	—	—	4		870.	
—	—	—	8	470.		
—	—	—	9	470,	728, 805.	
—	—	—	10		735.	
—	—	—	11	297, 300.		
—	—	4	—	201,		1193, 1229.
—	—	—	2	216, 551,	810,	1249.
—	—	—	3		992.	
—	—	—	4		810.	
—	—	5	3		870.	
—	—	—	4	499.		
—	—	6	2		687.	
—	—	7	—		687, 1046.	
—	—	8	—	241,	863.	
—	—	—	2			1159.
—	—	—	5	536.		
—	—	—	7	413.		
—	—	—	8	413.		
—	—	—	9	413.		
—	—	—	10	413, 437.		
—	—	10	—			1236.
—	—	12	1	406.		
—	—	12	—			1191, 1226.
—	—	—	3	376,	870.	
—	—	13	—		659.	
—	—	14	—		668.	
—	—	—	4		668.	
—	—	—	5		668.	
—	—	—	6		804.	
—	—	—	7		668.	
—	—	—	8		1064.	
—	—	15	—	239, 293,		1248.
—	—	—	5	211.		
—	—	—	8	238,		1236.
—	—	16	3	207.		
—	—	—	4	408.		
—	—	20	—	202.		
—	—	—	1	240.		
—	—	—	3	537.		
—	—	21	—	224.		
—	—	22	—	289.		
—	—	24	—	289.		
—	—	25	1	212.		
—	XXVII.	—	—	92.		
—	—	16	—	593, 602.		
—	—	17	—	571.		
—	—	20	—		802.	
—	—	21	—	417.		
—	—	23	—	197, 199.		
—	—	25	—	500.		
—	—	29	—		776.	
—	—	30	—	500.		
—	—	31	—	209, 214, 418,	1052.	
—	—	32	—	297, 300.		

Year.	Reg	Sec.	Cl.	NUMBER OF CONSTRUCTIONS. Vol. I.	Vol. II.	Vol. III.
1814	XXVII.	34		197,	852.	
—	—	37	3	420.		
—	XXVIII.	—	—	186.		
—	—	2	—			1258.
—	—	4	—		919, 1009.	
—	—	5	—		821, 904.	
—	—	—	1			1254.
—	—	6	1		777.	
—	—	7	—	261.		
—	—	8	—	261,	1063,	1132.
—	—	10	2		740.	
—	—	11	—	9,	621.	
—	—	—	1		777.	
—	—	—	3		922.	
—	—	12	—		1009,	1207.
—	—	—	1			1254. ¢
—	—	—	3		1025, 1097,	1217.
—	—	—	4			1217.
—	—	13	—			1207.
—	—	16	1		949.	
—	—	19	—		657.	
1816	IV.	2	—	247.		
—	—	4	—	507.		
—	XI.	—	—		864.	
—	XIII.	—	—			1241.
—	XIV.	9	—		712.	
—	XV.	10	2	264.		
—	—	—	—			1335.
—	XVII.	7	—	344.		
—	—	—	2	258.		
—	—	—	4		907.	
—	—	—	5	678,	907.	
—	—	—	6		907.	
—	—	—	7		907.	
—	—	—	8			1228.
—	—	8	—			1247.
—	—	13	—			1192.
—	—	14	1			1192.
—	—	—	2			1192.
—	—	15	—	511.		
—	XVIII.	2	—		746.	
—	XXII.	—	—	304, 411, 608.		
—	—	19	—		782.	
1817	III.	—	—		767.	
—	VI.	2	—	343.		
—	XII.	24	—			1346.
—	XVII.	5	—		634, 1045.	
—	—	6	3	408.		
—	—	—	4		670, 865,	1199.
—	—	8	4	255, 558.		
—	—	—	5	287,		1224.
—	—	9	—	506.		
—	—	10	—		1061.	
—	—	—	1	464.		
—	—	—	3	559.		
—	—	11	—	261, 362.		

Year.	Reg.	Sec.	Cl.	NUMBER OF CONSTRUCTIONS. Vol. I.	Vol. II.	Vol. III.
1817	XVIJ.	13	1		1086.	
—	—	14	—	611,		1231.
—	—	—	2	285, 504, 518,	838,	1225.
—	XVIII.	—	—	334.		
—	—	6	—		649.	
—	—	7	—		691.	
—	—	—	3		894.	
—	XIX.	2	—	356.		
—	—	7	—	613.		
—	—	8	—	613,	675.	
—	—	9	—	297.		
—	—	—	3	336.		
—	—	16	2	285.		
—	XX.	10	4		728,	1364.
—	—	11	3		782.	
—	—	12	—			1365.
—	—	13	—	169,		1365.
—	—	16	2	585.		
—	—	—	17	381, 511,	727,	1136.
—	—	19	—		733.	
—	—	—	16			1167.
—	—	20	—	548.		
—	—	21	—	608.		
—	—	23	—		679.	
—	—	25	1		831.	
—	—	26	—		619,	1124.
—	XXV.	—	—		751.	
1818	IV.	12	—		867.	
—	V.	5	2	602.		
—	VI.	8	—	295.		
—	—	—	4		1012.	
—	VIII.	—	—	347, 390, 458, 548.		
—	—	2	2		623.	
—	—	3	—	460.		
—	—	6	—			1240.
—	—	7	—		734.	
—	—	9	2	517.		
—	—	10	—		771.	
—	X.	5	1		892.	
—	XII.	—	—	307,	684.	
—	—	2	—	298, 303.		
—	—	—	2	374, 379.		
—	—	—	3	299, 301.		
—	—	—	4	299.		
—	—	—	5	299.		
—	—	3	—	303, 391, 488.		
—	—	—	4	358, 419, 468,	994.	
—	—	4	—	303, 466.		
—	—	5	—	501, 545,		1184.
—	—	—	1			1246.
—	—	7	—	318.		
1819	I.	3	2			1346.
—	II.	—	—	508, 534, 603.		
—	—	13	—		1079.	
—	—	22	—		768.	
—	—	27	—		768.	
—	—	30	—	320, 499, 527, 576, 584,	669, 981, 1067,	1261.
—	—	—	1	427, 450, 455, 576, 589.		

Year.	Reg.	Sec.	Cl.	NUMBER OF CONSTRUCTIONS. Vol. I.	Vol. II.	Vol. III.
1819	II.	30	6	.....	.....	1245.
—	—	—	7	338, 450, ...	987, 1076, ...	1245.
—	—	—	8	.....	1076.	
—	VI.	—	—	.....	713, 1111, ...	1144.
—	VII.	—	—	.....	.....	1265.
—	—	3	—	.....	992	
—	—	4	—	.....	.....	1141, 1163.
—	—	5	—	384, ...	924, 1085, ...	1329.
—	—	6	—	582, ...	.....	1329.
—	—	—	2	360.		
—	—	—	3	340, 345, 560, ...	913.	
—	—	—	4	344.		
—	—	—	6	.....	.....	1158.
—	VIII.	—	—	349.		
—	—	8	—	318, 329, 461, 523, 597.		
—	—	9	—	326, 580, 597, 614, ...	995, ...	1245
—	—	10	—	440.		
—	—	13	—	.....	.....	1248.
—	—	16	—	.....	995.	
—	—	17	2	491.		
—	—	—	5	.....	.....	1243.
—	—	—	7	.....	786.	
—	—	18	—	380, 456, 475, 482, 531.		
—	—	—	4	496, 502, ...	995, ...	1205.
—	—	—	5	.....	.....	1205.
—	—	19	—	380.		
—	IX.	3	1	336, 354.		
—	X.	—	—	476.		
—	—	36	—	.....	658.	
—	—	41	—	.....	653.	
—	—	67	—	471, 496		
—	—	104	—	489.		
—	—	110	—	.....	.....	1135.
—	—	111	—	.....	.....	1135.
—	—	113	—	486.		
—	—	114	—	.....	1113.	
—	—	115	—	.....	.....	1135.
1820	III.	—	—	314, ...	.....	1139.
—	IV.	—	—	401.		
1821	I.	—	—	.....	984.	
—	—	3	—	542, 562.		
—	II.	4	—	400, 480.		
—	—	5	—	416.		
—	—	6	3	463.		
—	—	7	—	451.		
—	—	8	—	586.		
—	—	12	—	355.		
—	III.	—	—	606.		
—	—	2	3	516, 529, 546.		
—	—	—	—	.....	683.	
—	—	—	5	.....	769.	
—	—	3	—	416, 516, 593, ...	627, 741.	
—	—	4	—	416, 451, ...	741.	
—	—	5	—	487, 521.		
—	—	—	1	.....	697, 730.	
—	IV.	3	—	603.		
1822	I.	2	—	423.		
—	—	4	—	423.		

Year.	Reg.	Sec.	Cl.	NUMBER OF CONSTRUCTIONS. Vol. I.	Vol. II.	Vol. III.
1822	V.			435.		
—	VI.	8	2	.....	943.	
—	VII	23	3	.....	677.	
—		24	3	.....	1018.	
—		11, 12, 14 and 16 to 35, ...		.....	.....	1369.
—	VIII.			474.	.....	1218.
—		3	1	.....	694.	
—		6		.....	1107.	
—	IX.			.....	926.	
—		2		533.		
—	XI.	15		.....	.....	1201.
—		21		.....	.....	1222.
—		28	2	.....	996.	
—			4	469.		
—		38		.....	1075, ...	1192.
1823	I.			562.		
—		2		562.		
—	IV.	6		.....	685, 691.	
—	VI.			655, ...	652, 661, 1002, ...	1367, 1369.
—		3	9	515.		
—		5		385.		
—		7		.....	873.	
1824	I.	12		388.		
—	IV.			366, ...	743.	
—		3		611.		
—		4		611.		
—	VI.	5		419, 488.		
—	VII			.....	.....	1241.
—		18	4	494.		
—	X.			405, ...	1026, 1041.	
—		3	1	535.	.....	1232.
—	XI.			.....	652.	
—		2		.....	676.	
—		3		.....	676.	
—	XIV.			603.		
—		2	2	425.		
—		5		496.		
—	XV.			396, 414, 415, 434, 444, 445, 447, 448, 453, 475, 482, 503, 546, 547, 561, 568, 571, 579,	633, 640, 652, 661, 689, 694, 724, 855, 875, 886, 1006, 1029,	1157, 1164, 1170.
—		3		371, 430, 505.		
—		5		378, 393.		
—		6		.....	769.	
—	XVI.			408, 416, 420, 428.		
—		3		412, 431.		
—		6	3	438.		
—		7	1	438.		
—		8		438.		
1825	II.			490.		
—		2	1	.....	842, ...	1375.
—		3		.....	683, 756.	
—	III.			389.		
—	IV.			446, 529.		
—		2		.....	831.	
—			1	.....	664.	

Year.	Reg.	Sec.	Cl.	NUMBER OF CONSTRUCTIONS. Vol. I.	Vol. II.	Vol. III.
1825	IV.	3			734.	
		4		460,	831, 1031.	
	VII.			592,	829, 1027.	
		2		554.		
			2		933.	
		3		509, 661.		
			6		794, 844, 877.	
		4	4		648, 794, 844.	
			6		648, 794, 844.	
		5	1		928.	
		7				1236.
	VIII.	2		407.		
		5			754.	
	IX.	3				1369.
		9			978.	
	XI.					1146.
	XII.				619.	
		4		402.		
		6	2			1262
	XVI.			433.		
	XVIII.			441.		
	XX.			443.		
		3	1		976.	
		4	3	498.		
	XXI.			439.		
1826	III.				624, 1021.	
		2		442, 507.		
		4		485, 545.		
		5		426.		
	X.	3				1211.
1827	III.	4			649.	
	V.			525, 544,	752.	
		3 & 4			1039.	
1828	III.			506.		
		2		534.		
		10	5	492.		
	VII.	20				1224.
	VIII.			542, 594,	610, 623, 626,	1154.
		2			774.	
		3			972	
1829	I.	5	1		792.	
		6				1107.
		7			1026, 1041.	
			1	535.		
		10		542.		
	II.	3		521.		
		4			769.	
	VIII.				703.	
	X.					1331.
		3		592,	970.	
		10	1		626.	
			7		626.	
			11		626	
		14 & 15				1161.
		17			811.	
		18			1120.	
		Sch. A.		592,	970.	
			Art. 3		656.	

Year.	Reg	Sec.	Cl.	NUMBER OF CONSTRUCTIONS. Vol. I.	Vol. II.	Vol. III.
1829	X.	Sch. A.	Art 7	557.		
—	—	—	Exemptions following Article 15	.....	1111.	
—	—	—	Art. 31	.....	635.	
—	—	—	Art. 46	.....	836.	
—	—	Sch. B.		.....	880, 1068, 1088.	
—	—	—	Art. 1	.....	679, 710.	
—	—	—	Art. 3	.....	773.	
—	—	—	Art. 7	553, 555, 557, 583.		
—	—	—	Art. 8	577, 583, ...	702, 706, 811, 872, 874, 957, 997, 1046, 1047, 1101, 1116,	1143, 1340, 1356.
—	—	—	Art. 8, Para. 4	.....	687.	
—	—	—	Art. 9	556, ...	767.	
—	—	—	Art. 10	557, ...	977.	
—	XII.	—		.....	755.	
—	XIV.	—		.....	.....	1355.
—	XVII.	—		.....	749.	
—	—	3	2	598.		
—	—	4	2	.....	.....	1125.
—	XVIII.	2		592.		
—	—	3	2	549.		
1830	IV.	—		600.		
—	V.	—		564, ...	.....	1130.
—	—	3		.....	872.	
—	—	5		.....	934.	
—	VI.	—	1	.....	.....	1130.
—	—	2		575.	647.	
—	—	3		.....	1000.	
—	VII.	7	1	.....	.....	1222.
—	—	—	2	.....	.....	1260.
1831	V.	—		.....	701, 714, 815, 870.	
—	—	3		.....	832.	
—	—	5		.....	892, 901, 919, 950, 1054, 1092.	
—	—	—	1	.....	871, 915.	
—	—	—	2	.....	1022.	
—	—	—	3	.....	696, 719, 811, 825, ...	1261.
—	—	6	4	.....	706.	
—	—	7		.....	833.	
—	—	9	2	.....	798.	
—	—	—	3	.....	764, 767.	
—	—	15		.....	692, 801.	
—	—	—	2	.....	1022.	
—	—	—	4	.....	.....	1235.
—	—	16		.....	676.	
—	—	—	2	.....	1022.	
—	—	—	3	.....	742, 780, 790, 796, 863, 878.	
—	—	18		.....	692, 801, ...	1149.
—	—	—	1	.....	1022.	
—	—	—	3	.....	802, ...	1168.
—	—	—	4	.....	.....	1226.
—	—	—	6	.....	689, 741, ...	1255.
—	—	20		.....	1118.	

Year.	Reg.	Sec.	Cl.	NUMBER OF CONSTRUCTIONS. Vol. I.	Vol. II.	Vol. III.
1831	V.	21				1226.
		22			947, 979,	1223.
		26	3		909.	
			4		908.	
			5		781.	
		27			668, 748, 753.	
			1		673, 691.	
			2		680.	
		28			688, 1055.	
	VI.		1		780, 1003.	
	VII.				700, 799, 819.	
		2			797.	
		13	2		771, 822, 823.	
	VIII.				685, 691.	
					713, 784, 860, 862, 946, 1001.	
		4		614, 615,	738.	
		5			837.	
		6			1028.	
		8			714, 867, 930.	
		9			879.	
		11			714.	
	X.	14				1252.
		15			951, 1094,	1252.
		20			677.	
	IX.				819.	
		2	2		675, 688, 742, 804, 839, 944.	
			3		820, 944.	
			4		804, 839, 944.	
			7		839.	
		3			662, 748, 914, 954.	
		4	2		662, 674.	
		7			711.	
		8			742.	
	XI.				940.	
		6			736, 907.	
1832	II.	2	2		708,	1338, 1364.
	III.				955.	
		2	2		887.	
	VI.				828, 835, 1019.	
		4			783.	
	VII.	3			834, 1088, 1118.	
		5			668, 775, 861.	
			2		762.	
		7			767, 798, 861, 947, 979, 1020,	1223.
		16			804, 839.	
		16			897, 921.	
			1		795.	
1833	II.		2		789.	
		5			791, 793.	
		6			614, 845, 880.	
	IX.				895,	1128, 1369, 1371.
		14			884.	
		15			884.	
	XII.	2				1166.
			2			1210.

Year.	Reg.	Sec.	Cl.	NUMBER OF CONSTRUCTIONS. Vol I.	Vol. II.	Vol III
1834	II.	2			863,	1184.
—	—	—	1		923, 993.	
—	—	—	2			1183.
—	—	3			881, 899, 972.	
—	—	—	1			1178, 1215, 1264.
	ACT.					
1835	VII.	—	—		1033,	1134.
—	XI.	—	—			1325.
1836	X.	5	—		1092,	1357, 1359.
—	XI.	—	—		1051.	
—	XIII.	—	—		1068,	1151.
—	XVII.	—	—		1064.	
—	—	5	—			1263.
—	XXVI.	—	—			1370.
—	XXX.	—	—		1074.	
1837	XVII.	9, 10 & 32	—			1204.
—	XIX.	—	—		1117,	1178.
—	XXIV.	2	—			1197.
—	—	5	—			1145, 1239, 1247.
—	—	7	—			1142, 1146, 1162, 1197, 1198.
—	XXV.	—	—		1112, 1116,	1146, 1149.
—	—	8	—			1292.
—	—	12	—			1160.
—	—	5	—			1302.
1838	VII.	—	—			1228.
—	XXII.	—	—			1228.
—	XXVII.	2	—			1266.
—	XXIX.	31	—			1136.
1839	I.	—	—			1219, 1225.
—	IX.	—	—			1299, 1250.
—	—	1	—			1356.
1840	IV.	—	—			1333, 1344, 1347, 1366.
—	—	2	—			1359.
1841	XXIX.	—	—			1321, 1334, 1339, 1369.
—	—	2	—			1327.
—	XXXI.	—	—			1322, 1326, 1332, 1353, 1370, 1380.
—	—	2	—			1361.
1842	X	—	—			1367.
				ACTS OF PARLIAMENT.		
58	Geo 3	Chap 158	Sec 55		759.	
—	—	—	105	570,	682, 900.	
—	—	—	113		721.	

A

SUPPLEMENTARY INDEX

TO THE

GOVT OF INDIA LIBRARY

CONSTRUCTIONS

OF THE

Sudder Dewanny and Nizamut Adawlut:

CONTAINING

1st. Errata in the Abstract-Index, Addenda, and Notanda.

2nd. All the Constructions omitted in the Abstract-Index.

3rd. A Key to the Abstract-Index, showing the Pages in which each Construction is to be found.

BY

F. L. BEAUFORT,

Bengal Civil Service.

FACILE EST INVENTIS ADDERE.

Published with the approval of the Sudder Dewanny Adawlut and Government.

CALCUTTA:

G. H. HUTTMANN, BENGAL MILITARY ORPHAN PRESS.

1845.

PART I.

ERRATA. ADDENDA ET NOTANDA

Page.	*Heading.*	*No. of Paragraph.*	
3	Affrays, ...	1	After "armed" insert "men."
10	Arrest, ...	1	For May read March.
,,	,, ...	4	Last line :—for page 308 read 307.
,,	,, ...	5	For page 45 read 245.
,,	Assistance, writ of, ...	1	For No. 267 read 367.
11	Assistant to the Magistrate, ...	2	This Construction has been rescinded by C. O. N. A. August 2, 1845. Specially empowered assistants are not competent to require moochulkas and security under Regulation IV. 1825.
,,	,, ...	4	For Cap. 105 read Cap. 155, Section 105.
,,	,, ...	7 and 11	*Note.*—Under C. O. N. A., February 23, 1845, such cases are no longer cognizable by any officer not exercising the full powers of a magistrate; and the appeal from an assistant vested with special powers lies to the session judge under Act XXXI. 1841.
14	Bail,...	6	The dates of Construction No. 1233 are C. C. 19th July and W. C. 9th August 1839.
16	Cattle, ...	1	Insert "horses."
,,	,, ...	2	For vol. II. read III.
,,	Chowdrees, ...	1	*Note.*—Magistrates can no longer interfere in the appointment or dismissal of chowdrees. See C. O. N. A., May 6, 1844.
20	Collector, ...	31	Last line, for July read June.
21	,, ...	42	For vol. II read III.
24	Contempt,.....	2	Contempt is now punishable under Act XXX. 1841, that portion of Regulation XII. 1825 referring thereto having been repealed.
25	Conviction of two or more offences, ...	1	Third line, for 1807 read 1810.
26	Curator, ...	1	For 1843 read 1841.
30	Dispossession summary process of Criminal Courts in cases of, ...	3	For "mortgager" read "mortgagee."
31	Ditto, ...	7	*Note.*—This will not hold good, when the collector is engaged in making settlements, or is acting under the powers vested in collectors by Section 16, Regulation VII. 1822, and Section 2, Regulation IV. 1828, which enactments suspend the powers of a

Page.	*Heading.*	*No. of Paragraph.*	
			magistrate to interfere in such muhals pending settlement, and authorize the collector to revise, alter, or reverse, the summary decisions passed by the magistrate. Pending settlement, the period of which is defined, the magistrate must refer all such disputes to the revenue authorities.
31 & 32	Dispossession, summary process of Criminal Courts in cases of, ...	13 and 24	*Note.*—Superseded by Act XXXI. 1841, and C. O. N. A. February 28, 1845. See note supra page 11.
33	Embezzlement, ...	5	For "are" read "is."
37	Execution of decrees II., ...	18	Insert the number of Construction, viz. 1248.
40	*Ditto VII.*, ...	5	Insert No. 794 W. C. 12th June, C. C. 5th July 1833.
42	Fines, ...	4	For July read June.
43	Ditto, ...	13	For 9th June read 29th June.
„	Ditto, ...	19	Last line, for 1839 read 1842; and for page 344 read 86.
44	Forfeiture of land, ...	1	For Section 12 read 22; and for Section 13 read 23.
45	Gang robbery, ...	1	For Regulation II. read III. *Note.*—The latter portion of this Construction is obsolete, as Regulation III. 1825 was rescinded by Regulation XVI. 1825, and the Clause in the latter, which makes a reference to the Nizamut Adawlut necessary, has been repealed by Regulation I. 1831.
„	Gomashteh, ...	3	For "applicable" read "inapplicable."
47	Illegitimate children, ...	3	For vol. II. read III.
48	Incest, ...	1	For "Clause 6" read "Clause 4, Section 6."
49	Indigo, ...	17	For page 505 read 96.
51	Jails, criminal, ...	5	*Note.*—This Construction is rendered obsolete by Act XVIII. 1844.
52	Jurisdiction of Criminal Courts, ...	2	After "residing" insert "or being."
53	Ditto, ...	7	*Note.*—The latter portion of this Construction has been superseded by Act XVIII. 1839, under which the offence of unlawfully and knowingly buying property plundered by Thuggee may be tried by any court, which would have been competent to try it, if the offence had been committed within the zillah where that court sits.
54	Law Officer, ...	2	After "law-officer" insert "in his capacity of law-officer."
56	Magistrate's orders, appeals from, ...	20	For Section 17 read 7, and for page 204 read 240.
„	Ditto, ...	27	First line, after 7 insert Section 7.
58	Ditto, ...	54	For 9th August read 19th August.
59	Magistrate, powers of, ...	16	*Note.*—This has been rescinded by C. O. N. A. May 6th, 1844. See note on chowdrees, page 16.

Page.	*Heading.*	*No. of Paragraph.*	
62	Miscellaneous cases, criminal, ...	1st	Second line, for "criminal award" read "judicial award."
64	Moochulka, or recognisance to keep the peace, ...	3	This Construction has been rescinded by C. O. N. A. August 2, 1845.
„	Moochulka, or recognisance to secure attendance, ...	2	For vol. II. read III.
70	Mortgage, ...	10	For "mortgager" read "mortgagee."
73	Native Officers, ...	35	For page 195 read 295.
„	Neglect of duty, ...	2	For 1814 read 1812.
74	Ditto, ...	10	After "neglect" insert "in conniving at the escape of a convict;" and for "to" read "by."
75	Nizamut Adawlut,..... ...	15	For vol. II. read III.
76	Opium,.....	1	Second line, for Regulation VIII. read VII.
81	Paupers, ...	18	For No. 1033 read 1032.
87	Police Officers, ...	5	After "petition" insert "containing a specific request either that search may be made for the stolen property, or that the offenders may be apprehended."
„	Post Office, ...	4	For "Act II. 1839" read "Section 8, Act XX. 1838." *Note.*—The former enactment is not applicable, because "other means of enforcing the payment" have been provided by the latter.
89	Principal Sudder Ameen, ...	10	For 6th July read 8th, and for page 244 read 264.
96	Reference to Sudder Dewanny,.....	9	For "Commissioner" read "Session Judge."
105	Rewards, ...	2	*Note.*—This Construction has been superseded by Act XVI. 1843, which repeals Section 16, Regulation XVI. 1810.
106	Ryots, ...	1	For "Dewanny" read "Nizamut."
108	Security for good conduct,.....	14	Fourth line, for Section 2 read 20.
110	Slavery, ...	5	For 1825 read 1835.
„	Sodomy, ...	1	Dele "except for mitigation;" and insert "unless he differs with the law officer, or considers the punishment prescribed by Clause 7, Section 2, Regulation LIII. 1803 insufficient."
117	Stolen property,.....	6	First line after "proved" insert "to have belonged to or."
120	Superintendent of Police, ...	2	For page 26 read 25.
„	Ditto, ...	4	For page 44 read 45.
124	Witnesses, ...	19	For 28th February read 8th.
125	Workmen, ...	12	For page 88 read 17,
126	Zillah and City Courts,.....	9	For August read April.
„	Zumeendars,.....	5	For "willingly" read "wilfully."

PART II.

CONSTRUCTIONS OMITTED IN THE INDEX.

ACCOUNT BOOKS.

Page

1. The rule in Section 24, Regulation XII. 1817, which requires putwarees to produce their accounts when called for by the courts of justice, is applicable to the subordinate courts. Moonsiffs, who may require to put the rule in force, should send the putwaree with a proceeding to that effect to the judge. No. 1346, C. C. June 24, W. C. August 2, 1842, ... III.

AFFRAYS.

2. A magistrate is competent to punish of his own authority persons implicated in an affray, although attended with slight wounding; and may award labour and irons. [*Under Section* 3, *Regulation II.* 1834, *the imprisonment must be without irons, and with fine, and it is only in default of payment of the fine that labour can be adjudged.*] No. 423, June 30, 1826, ... I. 178

AMEENS.

3. When the measurement of lands becomes necessary in addition to other local enquiries, the court may appoint a mohurrir and a nullee, or nullees, subordinate to the ameen with allowances not exceeding those of the ameen, but in addition thereto. No. 1337, C. C. May 13, W. C. June 2, 1842,... III. 90

4. In giving possession of lands so extensive as to render it impossible for one ameen to complete the duty within a moderate period, the court may appoint an assistant, or assistants, on separate allowances not exceeding those of the ameen. No. 1337, C. C. May 13, W. C. June 2, 1842, ... III. 90

5. The court has no power to appoint an ameen to give possession with larger allowances than 12 annas per diem. No. 1337, C. C. May 13, W. C. June 2, 1842, ... III. 90

II. Appeals from one's own decisions.

6. Construction No. 19, which allows a judge to try in appeal causes formerly tried and decided by him as register is superseded by Construction No. 305. (*See No.* 2 *of this head.*) No. 19, April 26, 1806, ... I. 6

III. Appeals, Regular.

Page

7. All cases tried and decided in the first instance by the provincial courts are appealable to the Sudder Dewanny Adawlut, although the value adjudged against the appellant be less than Rs. 5,000. [*Superseded by Clause* 3, *Section* 28, *Regulation V.* 1831.] No. 72, December 13, 1810, ... I. 17

V. Appeals, preparation and trial of.

8. Under Acts VII. and XXII. 1838, the provisions of Clause 2, Section 27, Regulation XXIII. 1814, (regarding appeals in cases dismissed by a moonsiff without an investigation of the merits) and Construction No. 870, (see answers to queries 4th and 6th) are virtually superseded. [*The clause quoted has been expressly repealed by Section* 3, *Act XXIX.* 1841.] No. 1228, W. C. June 28, C. C. August 2, 1839, ... III. 57

9. The period of one month allowed for furnishing security for costs should be calculated from the date of the decree. If the order for summoning the defendant be passed within that period, and the remaining portion of the month is so brief as not to allow the appellant to furnish security prior to its expiration, the judge may exercise discretion in making a further allowance of time. No. 1244, W. C. August 31, C. C. October 4, 1839, ... III. 63

VIII. Appeals, Summary.

10. The Regulations do not provide for a summary appeal from the decisions of moonsiffs; and consequently the rules regarding summary appeals are not applicable to such officers. [*A summary appeal now lies to the judge from the orders or decrees of moonsiffs under the same rules as summary appeals from other officers under Act XXII.* 1838. *See Construction No.* 1228 *infra.*] No. 870, paras: 5 and 6, February 21, 1834, ... II. 159

11. A summary appeal does not lie on the ground that the suit was tried *exparte* in opposition to the Regulations; in such cases the appeal must be regular. No. 870, para: 5, February 21, 1834,...II. 159

12. *Clause 2, Section 27, Regulation XXIII. 1814, (which regards appeals in cases dismissed by moonsiffs without investigation of the merits) and Construction No. 870 (answers to queries 4th and 6th) are virtually superseded by Acts VII. and XXII. 1838, [*and expressly so by Section 3, Act XXIX.* 1841.] No. 1228, *W. C. June 28, C. C. August 2, 1839, ...As..... III. 57

ASSISTANT JUDGE.

N. B.—The office of assistant judge was abolished by Regulation XXIV. 1814.

13. A judge is not authorized to recall suits, referred by him to an assistant judge under Sections 2 and 3, Regulation XLIX. 1803, except in cases of evident necessity arising from the absence of that officer, or from the vacancy or discontinuance of the office. No. 7, June 5, 1805, ... I. 2

14. Summonses to respondents in causes decided by an assistant judge, and appealed to a provincial court, are to be forwarded by the zillah judge to the assistant judge to be executed by the latter. No. 13, November 15, 1805, ... I. 4

15. Native officers attending an assistant judge may be employed, as far as is compatible with the discharge of their current duties, to assist the officers of the zillah court in transcribing the papers of appealed cases. No. 13, November 15, 1805,... I. 4

BURGLARY.

16. Although Clause 4, Section 2, Regulation XI. 1814, misquotes the punishment to which a burglar is liable under Clause 3, Section 3, Regulation I. 1811, by inserting the words "in banishment," yet the punishment of banishment cannot be adjudged under that clause, as it does not form part of the punishment in the clause cited. [*A sentence of banishment may be passed in cases of burglary under Clause 3, Section 2, Regulation XII.* 1818.] No. 218, August 2, 1815, ... I. 70

17. Under the discretion vested in the courts of circuit by Clause 3, Section 2, Regulation XII. 1818, they may mitigate punishment in the offences therein alluded to below 3 years imprisonment, and to such degree as they may judge proper. No. 299, December 26, 1818, ... I. 120

CIVIL JAIL.

18. The control of the civil jail is vested in the magistrate under the superintendence of the commissioner of circuit. [*Obsolete, see Act XVIII.* 1844.] No. 507, May 8, 1829, ... I. 216

CONFESSION.

19. Unless the prisoner deny *in toto* having made *any*, his mofussil or foujdary confession or examination adduced in evidence against him, though not proved by the testimony of the subscribing witnesses, should be read and explained to him at the time of taking his defence, and his admission or denial of the same entered on the record. No. 763, February 22, 1833, ... II. 85

COURT OF CIRCUIT.

20. *Any general rules or forms, which courts of circuit may judge necessary to be observed by magistrates, should be proposed in the first instance to the Nizamut Adawlut. [*See Clause 1, Section 3, Regulation VII.* 1829.] No. 97, February 27, 1812, ... I. 25

DISMISSAL ON DEFAULT.

21. If the plaintiff absent himself previous to service of notice on the defendant, or before the reply be filed, the suit cannot be proceeded in and must be dismissed. No. 870, February 21, 1834, para: 4, II. 159

22. Under Acts VII and XXII. 1838 the provisions of Clause 2, Section 27, Regulation XXIII. 1814 and part of Construction No. 870 are virtually superseded;—that is to say, that in a case dismissed on default by a moonsiff a summary appeal now lies to the judge. [*The clause quoted has been expressly repealed by Section 3, Act XXIX.* 1841.] No. 1228, W. C. June 28, C. C. August 2, 1839, ... III. 57

DISPOSSESSION, SUMMARY PROCESS OF CRIMINAL COURTS IN CASES OF.

23. The Nizamut Adawlut did not approve of a mode proposed of instituting a separate and formal preliminary investigation to determine the question of relevancy in suits instituted under Regulation XV. 1824, and of a form proposed for taking the depositions of parties in such cases. The question of relevancy is best established by the evidence adduced to prove the dispossession. No. 396, July 22, 1825, ... I. 166

24. The original certificate from the foujdaree to the dewanny court, made under Clause 1, Section 5, Regulation VI. 1813, is not sufficient for the purpose contemplated in Section 4, Regulation XV. 1824. Under the last section the magistrate must in all cases send a copy of his proceeding to the civil court, on receipt of which the judge will transmit to the magistrate his proceedings in any case pending before him under Regulation VI. 1813 to which the proceeding of the magistrate appears to refer, and will proceed no further in the investigation of such case except on the institution of a regular suit. [*Superseded by Act IV.* 1840.] No. 444, March 2, 1827, ... I. 187

IV. Execution of Decrees, Sale of Lands in.

26. Clause 2, Section 7, Regulation VII. 1830 is applicable only to sales of estates permanently assessed. [*Obsolete, Regulation VII.* 1830 *is repealed by Act XII.* 1841.] No. 1260, W. C. November 1, 1839, Government January 16, 1840, ... III. 68

FINES.

26. The Sudder Dewanny Adawlut did not approve of a suggestion that parties fined under Clause 3, Section 12, Regulation XXVI. 1814, (*i. e.* for being unprepared to file exhibits on the day notified for the hearing of the suit) should instead of cash payments present petitions on stampt paper equal to the amount of the fines. No. 376, April 8, 1825, I. 156

INDIGO.

27. A magistrate has power to attach indigo crops only when the dispute is cognizable under Regulation XV. 1824, [*at present Act IV.* 1840.] and in cases in which he cannot act himself he must refer the parties to the civil court. No. 661, October 21, 1831, ... II. 28

MAGISTRATE'S ORDERS, APPEALS FROM, &c.

28. A magistrate may decide and pass sentence of punishment without reference to the court of circuit, provided he does not exceed his competency. No. 121, March 8, 1813, ... I. 35

II. Moonsiffs, powers and duties of.

29. Moonsiffs desiring to confine a putwaree until he produce his accounts, should send him with a proceeding to that effect to the judge. No. 1346, C. C. June 24, W. C. August 2, 1842, ... III. 92

NATIVE OFFICERS.

30. The provisions of Regulation V. 1804 (relating to the appointment and dismissal of native officers of Government) are applicable to English writers natives of India. No. 31, August 1, 1807, I. 8

V. Original Suits, amount of action in.

31. All original regular suits, in which the amount of the claim exceeds rupees 5000, are to be instituted and tried in the first place in the provincial court. [*Superseded by Section* 2, *Regulation XIX.* 1817.] No. 227, November 9, 1815,... I. 75

PAUPERS.

32. As the stampt paper before given to paupers is no longer receivable under Regulation I. 1814, on their returning the former they should be furnished with the stampt paper prescribed by that Regulation. [*Obsolete, see Regulation XXVIII.* 1814.] No. 169, July 20, 1814, ... I. 52

PLEADERS IN CIVIL COURTS.

33. The deposit to be made for vakeels' fees under Section 23, Regulation XXVII. 1814, instead of furnishing security as before required, must be made in all cases, in which security would have been demandable under the rules in force before the promulgation of that Regulation. [*As regards summary suits see Clause* 3, *Section* 9, *Regulation XIX.* 1817.] No. 199, March 29, 1815,..... I. 63

34. The provisions of Section 31, Regulation XXVII. 1814, (regarding the fees of pleaders in suits withdrawn or dismissed on defaults) must be deemed applicable to all suits, whenever instituted, withdrawn or dismissed on default after the date fixed for the operation of that Regulation. No. 214, July 6, 1815, ... I. 68

POLICE OFFICERS.

35. A single judge holding a sitting of the court of circuit, or the half-yearly session of jail-delivery, is not competent to authorise the removal of a police darogah. [*But see Section* 15, *Regulation XXV.* 1814, *and Clause* 8, *Section* 7, *Regulation XVII.* 1816, *and No.* 15 *of this head*]. No. 88, July 4, 1811, ... I. 21
No. 91, September 19, 1811,..... I. 22

POSTPONED TRIALS.

36. If a judge of circuit, holding a monthly jail-delivery, is unable to dispose of any particular trial by the end of the month, such trial ought to be postponed for the judge holding the session for the ensuing month; as also all miscellaneous business not completed before the end of the month. (*Obsolete*). No. 147, March 31, 1814, ... I. 46

PUTWAREES.

37. The rule in Section 24, Regulation XII. 1817, which requires putwarees to produce their accounts when required by the courts of justice, is applicable to the subordinate courts. Moonsiffs, who may require to put the rule in force, should send the putwaree with a proceeding to that effect to the judge. No. 1346, C. C. June 24, W. C. August 2, 1842, ... III. 92

RECORDS.

38. Copies of decrees prepared for records of court may be written on any paper. *(Superseded, except as regards the courts of moonsiffs and sudder ameens, by Clause 2, Section 16, Regulation XXVI. 1814, which requires English paper of a particular size and description.)* No. 184, August 17, 1814, ... I. 57

REGULATIONS, ERRORS IN.

39. If a new law should enact for a certain offence the same punishment as is prescribed by a former regulation, the provisions of which it at the same time misquotes so as to make the degree of punishment greater,—the force of the former law is not altered, and the court must be guided by it in awarding punishment. No. 218, August 2, 1815, I. 70

40. In the Persian translation of Section 73, Regulation XXIII. 1814, Section 45 is erroneously inserted and made applicable to sudder ameens. No. 239, February 17, 1816, ... I. 80

RESISTANCE OF PROCESS.

41. Cases of resistance of process should not be punished as affrays, as that offence has its appropriate penalty. No. 549, April 30, 1830,..... I. 232

REVIEW OF JUDGMENT.

42. An application for a review of judgment, under a stated difference of opinion between two judges, should be brought before another judge, when the question may be decided by a majority of voices. *(But see Section 3, Regulation II. 1825).* No. 175, August 3, 1814,..... .... I. 55

43. Applications for a review of judgment should be brought, whenever practicable, before the judge or judges, by whom the judgment was passed. *(Since made law by Regulation II. 1825).* No. 201, April 18, 1815, ... I. 63

SECURITY FOR GOOD CONDUCT.

44. Security prisoners breaking jail are liable to a sentence of six months' imprisonment only, and cannot be committed to the sessions under Clause 1, Section 9, Regulation LIII. 1803. *(Superseded by Clause 1, Section 5, Regulation XII. 1818).* No. 161, May 20, 1814, ... I. 49

SESSION JUDGE.

45. A single judge of the court of circuit is not competent to authorize the removal of a police darogah. *[But see Section 15, Regulation XXV. 1814, and Clause 8, Section 7, Regulation XVII. 1816, and No. 22 of this head.]* No. 68, July 4, 1811, ... I. 21

No. 91, September 19, 1811, ... I. 22

III. Stamps in lieu of Institution Fee for Petitions of Plaint and Appeal.

46 In a suit, in which Government claimed the rent of certain lands, the provincial court on appeal from the zillah court adjudged a portion of the lands, rented at 2000 rupees per annum, to be valid lakhraj :—a special appeal made by Government to the Sudder Dewanny Adawlut was declared admissible on payment of the institution fee upon 20,000 rupees, i. e. ten times the annual amount adjudged the appellant by the decree of the provincial court. *[Obsolete.]* No. 16, January 25, 1808, ... I. 5

IV. Stamps for Pleadings.

47. Under Section 12, Regulation XII. 1805 Clauses 1 and 2, Section 18, Regulation VI. 1797 are extended to Cuttack ; and the words "pleadings and other papers which are considered to be of the nature of pleadings" in the former include all miscellaneous petitions and answers, and other applications made under Clause 9, Section 17, Regulation VI. 1797. *[Regulation VI. 1797 was rescinded by Regulation I. 1814.]* No. 25, September 27, 1806, ... I. 7

VII. Stamps for Bail and Security Bonds.

48. As there is no rule extant by which the value of security bonds for a specific amount should be determined, such documents should be received on plain paper, until Government declares by a formal enactment the amount of the stampt paper on which they should be executed. *[See Art. 1, Schedule B, Regulation X. 1829.]* No. 431, September 22, 1826, ... I. 161

SUDDER AMEENS.

49. The rules regarding the execution of decrees passed by sudder ameens are contained in Section 15, Regulation XXVI. 1814. No. 239, February 17, 1816, ... I. 80

THEFT.

50. If the magistrate does not state his reasons for committing the prisoner he should be called upon to supply the omission ; and in the event of insufficient ground for commitment being shown, the judge should caution him against making unnecessary commitments in future, and should not exceed the measure of punishment, which it would have been competent to the magistrate to award, had he himself disposed of the case. No. 391, June 10, 1825, ... I. 163

PART III.

No.	Date of Construction.	Page of Abstract Index.	No.	Date of Construction.	Page of Abstract Index.
1	May 3, 1798,	9.	28	Feby. 28, 1807,	30.
2	May 2, 1799,	44.	29	May 30, „	126.
3	April 8, 1802,	86.	30	July 18, „	76, 100.
4	Jany. 11, 1803,	37.	31	Aug. 1, „	Supplement No. 30.
5	May 10, 1804,	96.	32	„ 1, „	1.
6	April 3, 1805,	111.	33	Jany. 21, 1808,	100.
7	June 5, „	Supplement No. 13.	34	Feby. 13, „	80.
8	July 27, „	106.	35	March 26, „	100.
9	Sept. 13, „	54, 80.	36	May 18, „	97.
10	„ 18, „	17, 18.	37	June 10, „	9.
11	„ 26, „	54, 80.	38	„ 22, „	84.
12	Octr. 18, „	54, 80.	39	„ 22, „	30.
13	Novr. 15, „	Supplement Nos. 14 & 15.	40	July 4, „	62.
14	„ 29, „	53.	41	Sept. 13, „	100.
15	Decr. 18, „	69.	42	„ 17, „	30, 100, 126.
16	Jany. 25, 1806,	Supplement No. 46.	43	Novr. 10, „	1, 105.
17	„ 29, „	29.	44	Decr. 7, „	39, 53.
18	Feby. 8, „	84.	45	„ 21, „	63.
19	April 26, „	Supplement No. 6.	46	May 24, 1809,	44.
20	May 3, „	35.	47	June 13, „	45.
21	June 25, „	17, 39.	48	Sept. 18, „	9.
22	Aug. 6, „	97.	49	Octr. 3, „	86.
23	„ 9, „	100.	50	„ 3, „	86.
24	Sept. 20, „	49.	51	„ 3, „	86.
25	„ 27, „	Supplement No. 47.	52	Novr. 4, „	44, 83.
26	„ 27, „	30.	53	„ 18, „	73.
27	Feby. 1, 1807,	32, 100.	54	„ 21, „	71.

No.	Date of Construction.	Page of Abstract Index.
55	Novr. 28, 1809,	34.
56	Decr. 12, „	34.
57	Jany. 9, 1810,	54.
58	March 13, „	71.
59	„ 28, „	76.
60	May 22, „	49.
61	„ 22, „	100.
62	July 19, „	71.
63	„ 26, „	44.
64	Aug. 11, „	71.
65	„ 16, „	121.
66	„ 16, „	91.
67	„ 16, „	88, 96, 100.
68	„ 30, „	6.
69	„ 30, „	79.
70	Novr. 29, „	4, 91.
71	„ 29, „	38.
72	Decr. 13, „	Supplement No. 7.
73	Jany. 4, 1811,	78.
74	„ 10, „	91.
75	„ 31, „	45, 77.
76	„ 31, „	26.
77	„ 31, „	17.
78	Feby. 14, „	123.
79	„ 28, „	123.
80	March 14, „	69.
81	„ 15, „	88.
82	„ 28, „	120.
83	„ 28, „	91.
84	April 3, „	62.
85	„ 3, „	58.
86	April 11, 1811,	49.
87	„ 12, „	83.
88	July 4, „	Supplement Nos. 35, 45.
89	„ 11, „	2.
90	Sept. 12, „	37, 91.
91	„ 19, „	Supplement No. 45.
92	„ 19, „	84.
93	„ 26, „	126.
94	Octr. 24, „	60.
95	Decr. 12, „	49.
96	Jany. 16, 1812,	101.
97	Feby. 27, „	Supplement No. 20.
98	March 12, „	120.
99	April 23, „	110.
100	„ 23, „	95.
101	„ 23, „	24, 84, 86, 123.
102	May 19, „	23.
103	„ 21, „	65, 118.
104	June 24, „	122.
105	„ 25, „	69.
106	July 10, „	37.
107	This number is omitted in the original.	
108	July 23, 1812,	103.
109	Aug. 20, „	6.
110	Sept. 3, „	30, 37, 49, 81, 84, 101, 123.
111	Octr. 22, „	13.
112	„ 23, „	103.
113	Novr. 12, „	101.
114	„ 26, „	22, 55.
115	Decr. 3, „	11.

No.	Date of Construction.	Page of Abstract Index.
116	Decr. 24, 1812,	103.
117	Jany. 21, 1813,	91.
118	„ 25, „	91.
119	„ 28, „	96.
120	March 8, „	55.
121	„ 8, „	Supplement No. 28.
122	„ 17, „	76, 79.
123	„ 20, „	25.
124	„ 25, „	73.
125	April 22, „	82.
126	„ 29, „	103.
127	July 1, „	91.
128	„ 8, „	37, 101.
129	„ 15, „	38.
130	„ 15, „	37, 101.
131	„ 22, „	69.
132	Aug. 3, „	3.
133	„ 12, „	117.
134	„ 19, „	45.
135	„ 19, „	22, 96.
136	Octr. 28, „	36.
137	Novr. 11, „	23.
138	Decr. 11, „	60.
139	„ 16, „	44.
140	„ 23, „	12, 30.
141	Jany. 20, 1814,	120.
142	Feby. 3, „	12.
143	„ 3, „	120.
144	„ 24, „	15.
145	March 19, „	115.
146	„ 19, „	115.
147	March. 31, 1814,	Supplement No. 36.
148	„ 31, „	58, 61.
149	„ 31, „	107.
150	April 7, „	92.
151	„ 7, „	74.
152	„ 7, „	2.
153	„ 14, „	54.
154	„ 21, „	112.
155	„ 21, „	116.
156	„ 21, „	84.
157	„ 28, „	36, 74.
158	„ 29, „	30.
159	May 19, „	123.
160	„ 20, „	107.
161	„ 20, „	Supplement No. 44.
162	„ 26, „	45.
163	June 2, „	113.
164	„ 2, „	94.
165	„ 9, „	103.
166	„ 9, „	103.
167	July 6, „	55.
168	„ 13, „	16.
169	„ 20, „	Supplement No. 32.
170	„ 20, „	113.
171	„ 20, „	116.
172	„ 27, „	123.
173	„ 27, „	107.
174	„ 27, „	34.
175	Aug. 3, „	Supplement No. 42.
176	„ 3, „	71, 95.
177	„ 3, „	5, 16.

No.	Date of Construction.	Page of Abstract Index.
178	Aug. 17, 1814,	116.
179	„ 17, „	115.
180	„ 17, „	113.
181	„ 17, „	94.
182	„ 17, „	115, 115.
183	„ 17, „	115, 116, 116.
184	„ 17, „	Supplement No. 38.
185	„ 17, „	112.
186	„ 31, „	81.
187	Sept. 7, „	113, 115, 115.
188	„ 17, „	18.
189	Decr. 7, „	87.
190	„ 14, „	12.
191	Jany. 18, 1815,	11, 97.
192	„ 18, „	74.
193	„ 18, „	74.
194	„ 20, „	97.
195	Feby. 7, „	44.
196	March 1, „	79.
197	„ 1, „	84.
198	„ 8, „	38, 44.
199	„ 29, „	Supplement No. 33.
200	„ 29, „	88
201	Aprnl 18, „	Supplement No. 43.
202	„ 26, „	115.
203	May 18, „	103.
204	„ 18, „	123.
205	„ 25, „	23, 55.
206	„ 25, „	74.
207	June 1, „	116, 117.
208	„ 1, „	94.
209	June 1, 1815,	84, 94.
210	„ 8, „	51.
211	„ 15, „	97.
212	„ 15, „	94.
213	„ 30, „	12.
214	July 6, „	Supplement No. 34.
215	„ 6, „	17.
216	„ 27, „	97, 104.
217	„ 27, „	117.
218	Aug. 2, „	Supplement Nos. 16, 39.
219	„ 17, „	34, 65.
220	„ 31, „	101.
221	Sept. 8, „	123.
222	„ 14, „	23.
223	Decr. 7, „	97, 115.
224	Sept. 21, „	106.
225	Octr. 31, „	9, 41.
226	Novr. 3, „	96.
227	„ 9, „	Supplement No. 31.
228	„ 13, „	110.
229	„ 30, „	105.
230	Jany. 12, 1816,	76, 83.
231	„ 12, „	71.
232	„ 24, „	51.
233	„ 29, „	60, 83.
234	Feby. 3, „	101.
235	„ 9, „	55.
236	„ 9, „	107.
237	„ 16, „	71.
238	„ 16, „	36.
239	„ 17, „	Supplement Nos. 40, 49.

o.	Date of Construction.	Page of Abstract Index.	No.	Date of Construction.	Page of Abstract Index.
10	Feby. 17, 1816,	23.	271	March, 26, 1817,	82.
11	„ 17, „	5.	272	April 9, „	88.
12	„ 24, „	94.	273	May 21, „	95, 97.
13	March 15, „	115, 115, 116, 116, 118.	274	June 18, „	112.
14	„ 15, „	74.	275	July 2, „	1, 112.
15	„ 15, „	4, 7.	276	„ 2, „	115.
16	May 1, „	7.	277	„ 9, „	70.
17	„ 1, „	116.	278	„ 9, „	101.
18	„ 8, „	7, 120.	279	„ 9, „	93, 120.
19	„ 15, „	115.	280	Aug. 28, „	92, 104.
10	„ 22, „	101.	281	Sept. 18, „	30.
11	„ 29, „	97, 103.	282	Decr. 29, „	19, 71, 76.
12	June 5, „	18.	283	„ 29, „	24, 55.
13	Aug. 7, „	9.	284	„ 29, „	37, 38.
14	July 31, „	101.	285	Feby. 4, 1818,	83, 97, 102.
15	Aug. 21, „	101.	286	„ 4, „	9.
16	„ 21, „	88.	287	„ 4, „	15.
17	Sept. 4, „	53, 88.	288	„ 25, „	96.
18	„ 23, „	71.	289	March 16, „	115.
19	Octr. 31, „	55.	290	April 2, „	13, 55.
10	Decr. 26, „	94.	291	May 6, „	14, 19.
11	„ 26, „	81, 84.	292	July 9, „	111.
12	„ 26, „	7, 92.	293	„ 9, „	41.
13	Jany. 23, 1817,	70.	294	Aug. 20, „	18.
14	„ 29, „	61.	295	„ 27, „	86.
15	Feby. 19, „	101, 104.	296	Sept. 24, „	106.
16	„ 19, „	101, 104.	297	Decr. 11, „	85.
17	„ 26, „	23.	298	„ 26, „	15.
18	March 5, „	103.	299	„ 26, „	15, Supplement No. 17.
19	„ 26, „	118.	300	Jany. 29, 1817,	85.
10	„ 26, „	1.	301	„ 29, 1819,	15, 22.

No.	Date of Construction.	Page of Abstract Index.
302	May 28, 1819,	39, 49.
303	July 9, „	17.
304	Aug. 6, „	17.
305	„ 27, „	4.
306	Sept. 3, „	71.
307	„ 3, „	25.
308	Novr. 19, „	30, 40, 49.
309	Decr. 17, „	49.
310	Jany. 1, 1820,	46.
311	„ 7, „	30.
312	April 1, „	15, 112.
313	May 5, „	93, 100.
314	„ 5, „	14, 15.
315	„ 26, „	19.
316	June 2, „	19.
317	„ 30, „	26, 87.
318	July 7, „	23, 76.
319	„ 21, „	49.
320	„ 28, „	19, 98.
321	Aug. 4, „	112.
322	„ 4, „	101, 118.
323	„ 11, „	95, 101.
324	„ 11, „	112.
325	„ 18, „	1, 112.
326	Sept. 1, „	93.
327	„ 1, „	32, 101.
328	„ 1, „	49.
329	„ 15, „	93.
330	Novr. 17, „	19, 76.
331	„ 24, „	70.
332	Decr. 22, „	65, 101.
333	Decr. 29, 1820,	19.
334	„ 29, „	33, 71.
335	Feby. 2, 1821,	46, 77, 85.
336	„ 23, „	7.
337	„ 23, „	32, 100.
338	May 18, „	98.
339	„ 25, „	70.
340	„ 25, „	35, 35, 53, 55, 124.
341	June 1, „	77, 112.
342	July 6, „	44.
343	„ 6, „	76, 83.
344	„ 13, „	56, 71, 87.
345	„ 20, „	35, 124.
346	Aug. 3, „	77, 98.
347	March 29, 1822,	107.
348	April 19, „	32, 102.
349	„ 26, „	19, 38, 93.
350	Sept. 30, „	63, 74.
351	Jany. 24, 1823,	78.
352	May 2, „	25.
353	„ 9, „	110.
354	„ 30, „	7.
355	Sept. 26, „	40, 97.
356	Octr. 24, „	97.
357	„ 31, „	56.
358	Novr. 7, „	121.
359	Decr. 19, „	50.
360	„ 26, „	25.
361	March 26, 1824,	44, 58.
362	„ 26, „	18, 58.
363	April 9, „	92.

No.	Date of Construction.	Page of Abstract Index.
364	April 23, 1824,	19, 42, 58.
365	May 7, „	2.
366	June 25, „	96.
367	July 2, „	26, 76.
368	Sept. 2, „	30.
369	„ 21, „	5.
370	„ 21, „	70.
371	Novr. 26, „	86.
372	Decr. 31, „	49.
373	Jany. 21, 1825,	26.
374	„ 21, „	15.
375	Feby. 4, „	88.
376	April 8, „	Supplement No. 26.
377	„ 8, „	76, 77.
378	„ 8, „	27, 30.
379	„ 8, „	22.
380	„ 15, „	102.
381	„ 22, „	21, 105.
382	„ 22, „	91, 106, 126.
383	„ 29, „	56.
384	„ 29, „	125.
385	„ 29, „	48.
386	May 27, „	44, 79.
387	„ 27, „	56.
388	June 3, „	42, 106.
389	„ 3, „	124.
390	„ 10, „	95, 107.
391	„ 10, „	121, Supplement No. 50.
392	„ 10, „	62.
393	„ 17, „	30, 70.
394	„ 17, „	48, 106.
395	June 24, 1825,	9.
396	July 22, „	Supplement No. 23.
397	„ 29, „	34, 80.
398	Aug. 5, „	46.
399	„ 12, „	45.
400	„ 12, „	65, 66.
401	„ 18, „	41, 58, 62, 124.
402	„ 24, „	25.
403	„ 24, „	94.
404	„ 26, „	52.
405	Sept. 5, „	2.
406	Octr. 7, „	28.
407	Novr. 11, „	25, 71.
408	Decr. 2, „	25.
409	„ 2, „	113.
410	„ 16, „	46, 46.
411	„ 23, „	17, 35.
412	Jany. 27, 1826,	63, 117.
413	March 8, „	5.
414	„ 17, „	12, 19, 42, 58.
415	April 14, „	30, 95.
416	„ 14, „	63, 66.
417	„ 28, „	63, 84.
418	May 5, „	85, 94.
419	„ 12, „	121.
420	„ 26, „	32, 85.
421	June 2, „	102.
422	„ 23, „	126.
423	„ 30, „	Supplement No. 2.
424	„ 30, „	60, 118.
425	July 14, „	103.

No.	Date of Construction.	Page of Abstract Index.	No.	Date of Construction.	Page of Abstract Index.
426	July 14, 1826,	17.	457	Aug. 31, 1827,	124.
427	„ 28, „	99, 103.	458	„ 31, „	108.
428	Aug. 4, „	96, 117.	459	„ 31, „	60.
429	„ 4, „	63.	460	„ 31, „	64, 108.
430	Sept. 22, „	31.	461	Sept. 7, „	93.
431	„ 22, „	Supplement No. 48.	462	„ 7, „	79.
432	„ 26, „	79.	463	Octr. 12, „	118.
433	Octr. 23, „	96.	464	Novr. 30, „	18.
434	„ 27, „	31.	465	Decr. 7, „	123.
435	Novr. 3, „	91.	466	„ 21, „	117.
436	„ 3, „	53.	467	Jany. 25, 1828,	102.
437	„ 10, „	56, 96.	468	Feby. 8, „	121.
438	„ 26, „	96, 111.	469	„ 8, „	18, 76.
439	„ 24, „	78.	470	„ 22, „	28.
440	Decr. 8, „	76, 77, 93, 97.	471	„ 22, „	106.
441	„ 29, „	16.	472	„ 22, „	9.
442	„ 29, „	17.	473	„ 22, „	28.
443	Feby. 28, 1827,	78.	474	„ 22, „	52.
444	March 2, „	Supplement No. 24.	475	March 7, „	30.
445	„ 2, „	31.	476	April 8, „	72, 106.
446	„ 9, „	53, 64.	477	„ 8, „	7.
447	„ 9, „	31.	478	„ 18, „	79.
448	„ 16, „	30.	479	„ 18, „	96.
449	„ 30, „	12, 34.	480	„ 19, „	65.
450	„ 30, „	98.	481	May 2, „	65.
451	„ 30, „	39, 95, 118.	482	„ 9, „	30.
452	June 15, „	78.	483	„ 23, „	106.
453	July 13, „	30.	484	June 6, „	23.
454	„ 13, „	44.	485	July 4, „	59.
455	„ 20, „	98.	486	Aug. 15, „	17.
456	Aug. 17, „	12.	487	Sept. 12, „	50, 123.

No.	Date of Construction.	Page of Abstract Index.	No.	Date of Construction.	Page of Abstract Index.
488	Octr. 24, 1828,	121.	519	Aug. 21, 1829.	102.
489	Decr. 12, „	14, 56.	520	„ 21, „	69, 72, 118.
490	„ 15, „	104.	521	Sept. 4, „	56.
491	Jany. 9, 1829,	93.	522	„ 4, „	14, 72.
492	„ 9, „	98, 110.	523	„ 4, „	93.
493	„ 30, „	84.	524	„ 4, „	88.
494	Feby. 20, „	76, 106.	525	„ 4, „	12.
495	„ 27, „	36, 80.	526	„ 25, „	74.
496	March 13, „	37.	527	Octr. 30, „	98.
497	„ 13, „	4.	528	„ 30, „	60.
498	„ 27, „	61.	529	Novr. 20, „	11, 64.
499	„ 27, „	7, 98.	530	„ 27, „	60.
500	April 3, „	85.	531	„ 27, „	93.
501	„ 16, „	33.	532	Decr. 4, „	38.
502	„ 24, „	54.	533	„ 18, „	43.
503	„ 25, „	32, 100.	534	Jany. 1, 1830,	98, 111.
504	„ 25, „	83.	535	„ 1, „	2.
505	May 8, „	26.	536	„ 1, „	38, 96.
506	„ 8, „	83, 122.	537	„ 8, „	7, 115.
507	„ 8, „	Supplement No. 18.	538	„ 29, „	119.
508	„ 22, „	98, 111.	539	Feby. 26, „	14.
509	„ 29, „	73.	540	„ 26, „	40, 54.
510	June 5, „	92.	541	March 19, „	50.
511	„ 19, „	22, 105.	542	„ 19, „	111.
512	July 17, „	63.	543	April 2, „	33.
513	„ 17, „	56, 87.	544	„ 16, „	12.
514	„ 24, „	118.	545	„ 16, „	17.
515	„ 24, „	48.	546	„ 23, „	30.
516	„ 24, „	95.	547	„ 23, „	31.
517	Aug. 7, „	108.	548	„ 23, „	11, 108.
518	„ 7, „	32, 72.	549	„ 30, „	Supplement No. 41.

No.	Date of Construction.	Page of Abstract Index.	No.	Date of Construction.	Page of Abstract Index.
550	May 7, 1830,	38, 110.	581	Decr. 31, 1830,	102.
551	„ 7, „	28, 104.	582	Jany. 7, 1831,	125.
552	„ 14, „	7.	583	„ 7, „	113.
553	„ 28, „	17.	584	Feby. 25, „	99.
554	„ 28, „	39.	585	March 25, „	97.
555	„ 28, „	116.	586	Aprl 8, „	92.
556	„ 28, „	115.	587	„ 8, „	73.
557	„ 28, „	97.	588	„ 8, „	12, 34.
558	June 3, „	22, 24.	589	„ 8, „	99.
559	„ 11, „	18.	590	„ 8, „	26.
560	„ 11, „	125.	591	„ 15, „	92.
561	„ 18, „	30.	592	May 6, „	1, 112.
562	„ 18, „	111.	593	„ 6, „	85.
563	„ 18, „	85, 86.	594	„ 20, „	3.
564	July 9, „	48.	595	June 17, „	11, 35.
565	„ 9, „	48.	596	„ 24, „	46.
566	„ 16, „	97.	597	July 29, „	93.
567	„ 23, „	10, 41.	598	„ 29, „	121.
568	„ 23, „	30.	599	Aug. 12, „	19, 103.
569	„ 23, „	39.	600	Sept. 23, „	93.
570	„ 30, „	35.	601	„ 30, „	38.
571	Aug. 6, „	9, 31.	602	Octr. 14, „	85.
572	„ 27, „	44.	603	„ 21, „	11, 19, 99.
573	Sept. 17, „	56.	604	Novr. 11, „	117.
574	„ 17, „	32, 102.	605	„ 11, „	13.
575	„ 24, „	17.	606	„ 11, „	45.
576	Octr. 1, „	98, 99, 113.	607	„ 18, „	63, 86.
577	Novr. 5, „	75, 113.	608	„ 18, „	17.
578	„ 12, „	72.	609	„ 18, „	9, 74.
579	Decr. 17, „	30.	610	„ 25, „	60.
580	„ 24, „	93.	611	„ 25, „	83, 96, 97.

No.	Date of Construction.	Page of Abstract Index.
612	Novr. 25, 1831,	11.
613	„ 25, „	8.
614	Decr. 16, „	94.
615	„ 23, „	12, 19, 103.
616	„ 30, „	59.
617	„ 30, „	59.
	VOL. II.	
618	Jany. 14, 1831,	72.
619	„ 21, „	3, 24.
620	„ 21, „	64.
621	„ 21, „	39, 81.
622	„ 28, „	22.
623	Feby. 4, „	3, 22.
624	„ 25, „	17.
625	„ 25, „	52, 56.
626	„ 25, „	117.
627	„ 28, „	88, 95.
628	March 4, „	3, 22.
629	„ 4, „	24.
630	„ 11, „	70.
631	„ 25, „	54, 59.
632	April 8, „	35.
633	„ 29, „	30.
634	May 6, „	124.
635	„ 20, „	53, 112.
636	„ 20, „	10.
637	„ 27, „	46, 61.
638	„ 27, „	84.
639	June 10, „	47.
640	„ 10, „	31.

No.	Date of Construction.	Page of Abstract Index.
641	June 10, 1831,	7.
642	„ 10, „	86.
643	„ 17, „	24.
644	„ 24, „	70.
645	July 1, „	33.
646	„ 8, „	38.
647	„ 15, „	17.
648	„ 22, „	40.
649	„ 22, „	59, 72.
650	„ 22, „	24, 24.
651	Aug. 5, „	46.
652	„ 5, „	48.
653	„ 12, „	107.
654	„ 19, „	47.
655	„ 26, „	17.
656	Sept. 2, „	84.
657	„ 2, „	14, 56.
658	„ 16, „	124.
659	„ 30, „	4.
660	Octr. 21, „	52.
661	„ 21, „	Supplement No. 27.
662	Decr. 9, „	74.
663	„ 16, „	47.
664	„ 23, „	3.
665	Jany. 6, 1832,	12.
666	„ 6, „	46.
667	„ 13, „	64.
668	„ 13, „	25, 83, 118.
669	„ 13, „	99.
670	„ 13, „	3, 94.
671	Number omitted in original.	

No.	Date of Construction.	Page of Abstract Index.
672	Jany. 20, 1832,	70.
673	„ 27, „	4.
674	„ 27, „	74.
675	Feby. 17, „	27.
676	„ 24, „	5, 89, 118.
677	„ 24, „	19, 102.
678	„ 24, „	11.
679	W. C. March 7, / C. C. May 18, „	64, 116.
680	W. C. March 7, / C. C. „ 30, „	92.
681	March 7, „	5, 92, 125.
682	„ 16, „	47.
683	„ 16, „	104.
684	„ 16, „	59.
685	April 13, „	22, 109.
686	„ 27, „	22.
687	„ 27, „	75, 113.
688	W. C. „ 27, / C. C. May 18, „	5, 68, 118.
689	W. C. April 27, / C. C. May 18, „	31, 118.
690	May 4, „	50.
691	W. C. „ 11, / C. C. June 1, „	22, 33, 72, 109.
692	May 18, „	65, 118.
693	„ 18, „	19, 95.
694	„ 18, „	31, 52.
695	C. C. „ 25, / W. C. „ 4, „	94.
696	C. C. „ 25, / W. C. July 6, „	65.
697	June 1, „	56.
	„ 8, „	124.

No.	Date of Construction.	Page of Abstract Index.
698	June 29, 1832,	5, 95.
700	July 6, „	74.
701	C. C. „ 6, / W. C. Aug. 17, Octr. 26, „	25, 64, 66, 68, 69, 103.
702	C. C. July 6, / W. C. „ 27, „	52, 113.
703	W. C. June 8, / C. C. July 6, „	43.
704	„ 13, „	22.
705	„ 20, „	125.
706	C. C. „ 20, / W. C. Aug. 17, „	18, 66, 67, 116.
707	July 27, „	53.
708	W. C. „ 27, / C. C. Aug. 24, „	15, 87, 121.
709	July 27, „	6.
710	W. C. Aug. 10, / C. C. Sept. 14, „	116.
711	W. C. Aug. 24, / C. C. Sept. 21, „	85.
712	W. C. Aug. 24, / C. C. Sept. 21, „	74.
713	C. C. Aug. 24, / W. C. Sept. 28, „	42.
714	C. C. Aug. 31, / W. C. Octr. 5, „	32, 65, 69, 100, 102.
715	W. C. Sept. 7, / C. C. Octr. 5, „	26, 50.
716	Sept. 21, „	14.
717	„ 21, „	19.
718	„ 21, „	62.
719	C. C. „ 21, / W. C. Octr. 26, „	65.
720	W. C. Sept. 21, / C. C. Decr. 28, „	47.

No.	Date of Construction.	Page of Abstract Index.
721	C. C. Octr. 5, / W. C. Novr. 9, 1832,	15, 37, 78.
722	Octr. 12, „	11.
723	„ 19, „	8.
724	„ 26, „	31.
725	„ 26, „	59.
726	„ 26, „	54, 124.
727	C. C. „ 26, / W. C. Decr. 7, „	106, 109.
728	Octr. 26, „	87.
729	Novr. 2, „	122.
730	„ 2, „	56.
731	W. C. „ 2, / C. C. „ 30, „	14, 72, 87.
732	C. C. „ 9, / W. C. Decr. 7, „	97.
733	Novr. 9, „	87.
734	„ 9, „	108.
735	W. C. „ 9, / C. C. Decr. 7, „	11.
736	W. C. Novr. 9, / C. C. Decr. 7, „	72, 87.
737	Novr. 16, „	72.
738	W. C. Novr. 16, / C. C. Decr. 7, „	19, 38, 102.
739	Novr. 23, „	78.
740	Decr. 7, „	81, 85.
741	C. C. „ 7, „ / W. C. Jany. 11, 1833,	95, 118.
742	Decr. 14, 1832,	6, 27, 95.
743	C. C. „ 14, „ / W. C. Feby. 5, 1833,	97.
744	Decr. 21, 1832,	41.
745	„ 21, „	13, 73.
746	C. C. Decr. 28, 1832, / W. C. Feby. 8, 1833,	51, 74, 120.
747	W. C. Novr. 30, / C. C. Decr. 28, 1832,	87.
748	W. C. Jany. 4, / C. C. „ 25, 1833,	5.
749	W. C. Jany. 4, / C. C. Feby. 1, „	121.
750	Jany. 4, „	45.
751	„ 4, „	18, 59.
752	W. C. Decr. 21, 1832, / C. C. Feby. 1, / Govt. March 8, 1833,	37.
753	C. C. Feby. 1, / W. C. March 1, „	8.
754	Feby. 1, „	61.
755	W. C. „ 7, / C. C. March 1, „	3.
756	C. C. Feby. 8, / W. C. March 15, „	104.
757	W. C. Feby. 8, / C. C. March 8, „	1, 14, 124.
758	Feby. 15, „	29.
759	„ 15, „	35.
760	„ 15, „	62.
761	W. C. „ 22, / C. C. March 15, „	62, 89.
762	W. C. Feby. 22, / C. C. March 15, „	88.
763	Feby. 22, „	24, Supplement No. 19.
764	C. C. March 1, / W. C. „ 29, „	116.
765	C. C. March 8, / W. C. April 12, „	10.
766	March 8, „	45.

No.	Date of Construction.			Page of Abstract Index
767	W C March 8, to C C " 29,	1833,		115,
768	W C " 13 to C C " 29	"		99, 115
769	C C March 15, to W C* April 4,	"		11, 31
770	C C March 15 to W C April 12,	"		125
771	March 22,	"		108, 109
772	W C " 29 to C C April 26,	"		13, 67
773	W C March 29, to C C April 26,	"		117
774	March 29,	"		3
775	W C April 4, to C C May 3,	"		67 124
776	W C April 4, to C C May 3	"		38, 85
777	C C April 6, to W C May 3,	"		81
778	April 6,	"		3, 93
779	C C " 12, to W C May 10,	"		4, 125
780	C C April 12, to W C May 10,	"		27, 38, 44
781	C C April 12, to W C May 17,	"		14, 59, 65, 72
782	April 12,	"		22
783	W C March 25, to C C April 12,	"		10, 24
784	C C April 19, to W C May 17,	"		19, 49
785	W C April 26, to C C May 31,	"		45
786	May 3,	"		34
787	" 3,	"		39
788	" 3,	"		37, 83

No.	Date of Construction.			Page of Abstract Index
789	W C May 10 to C C June 7,	1833,		92
790	W C May 10, to C C June 7,	"		27
791	C C May 10, to W C June 14,	"		92
792	May 17,	"		72
793	C C " 31, to W C June 28,	"		103
794	W C " 12, to C C July 5,	"		17, 40
795	C C June 14, to W C July 19,	"		94
796	W C June 14 to C C July 5,	"		27, 89
797	W C June 14 to C C July 5,	"		78
798	C C June 14, to W C July 19,	"		67, 68
799	June 14,	"		75
800	" 21,	"		10
801	W C July 5, to C C Aug 2,	"		65, 89, 118
802	W C July 5 to C C Aug 2,	"		85
803	July 5,	"		121
804	W C July 19, to C C Aug 16,	"		40, 119
805	C C July 19 to W C Sept 6,	"		8
806	W C July 26, to C C Sept 6,	"		35, 47
807	C C Aug 2, to W C Sept 6,	"		15, 77
808	W C Aug 2, to C C " 30,	"		44, 79.

No.	Date of Construction.	Page of Abstract Index.
809	C. C. August 2, W. C. Sept. 6, 1833,	63, 86.
810	C. C. Aug. 2, W. C. Sept. 20, "	7, 104.
811	Aug. 2, "	65.
812	" 16, "	97, 110.
813	C. C. " 16, W. C. Sept. 6, "	80.
814	W. C. Aug. 23, C. C. Novr. 1, "	7, 92, 119.
815	W. C. Aug. 23, C. C. Novr. 1, "	62.
816	W. C. Aug. 23, C. C. Sept. 27, "	16, 59.
817	Aug. 23, "	59, 124.
818	" 23, "	56.
819	W. C. July 12, C. C. Aug. 23, "	75.
820	" 23, "	84.
821	C. C. " 30, W. C. Sept. 20, "	81.
822	C. C. Aug. 30, W. C. Sept. 20, "	49, 109.
823	C. C. Aug. 30, W. C. Octr. 4, "	108, 109.
824	C. C. Aug. 30, W. C. Novr. 1, "	78.
825	C. C. Sept. 6, W. C. Octr. 4, "	65, 99.
826	Sept. 6, "	36, 64.
827	W. C. Aug. 9, C. C. Sept. 6, "	37, 72.
828	C. C. " 13, W. C. Octr. 4, "	88.
829	W. C. Sept. 20, C. C. Octr. 18, "	39, 48.
830	W. C. Sept. 20, C. C. Octr. 18, 1833,	70.
831	C. C. Sept. 20, W. C. Novr. 15, "	64.
832	C. C. Sept. 27, W. C. Octr. 18, "	65.
833	W. C. Sept. 27, C. C. Octr. 18, "	118.
834	C. C. " 4, W. C. Novr. 8, "	115.
835	C. C. " 4, W. C. Novr. 15, "	10, 24.
836	W. C. Octr. 11, C. C. Novr. 8, "	112.
837	W. C. Octr. 11, C. C. Novr. 8, "	102.
838	C. C. Octr. 11, W. C. Novr. 15, "	44.
839	W. C. Octr. 11, C. C. Novr. 8, "	8, 119.
840	Octr. 11, "	104.
841	" 11, "	97.
842	C. C. Novr. 1, W. C. " 29, "	105.
843	W. C. " 8, C. C. " 29, "	45.
844	W. C. " 22, C. C. Decr. 6, "	18, 40.
845	W. C. Novr. 29, C. C. Decr. 20, "	7, 92, 119.
846	C. C. " 6, W. C. " 27, "	8, 68, 85, 125.
847	" 13, "	123.
848	W. C. Octr. 18, Govt. Decr. 2, C. C. " 13, "	85, 77.
849	" 20, "	6.

No.	Date of Construction.	Page of Abstract Index.
850	W. C. Decr. 20, 1833, C. C. Jany. 3, 1834,	11.
851	Decr. 26, 1833,	10, 72, 87.
852	W. C. „ 27, „ C. C. Jany. 17, 1834,	85.
853	W. C. Decr. 27, 1833, C. C. Jany. 17, 1834,	19.
854	W. C. „ 10, C. C. „ 31, „	77.
855	C. C. „ 17, W. C. Feby. 14, „	31.
856	Jany. 24, „	37, 70, 117.
857	„ 24, „	2, 22
858	W. C. „ 31, C. C. Feby. 14, „	51,
859	„ 7, „	67.
860	W. C. „ 7, C. C. „ 28, „	102.
861	W. C. „ 7, C. C. „ 28, „	27, 67, 69, 83.
862	W. C. „ 7, C. C. „ 28, „	19, 52, 79, 114.
863	„ 14, „	3, 6, 69.
864	„ 14, „	78.
865	W. C. „ 14, C. C. „ 28, „	48.
866	W. C. „ 14, C. C. „ 28, „	78.
867	C. C. „ 14, W. C. March 26, „	100.
868	C. C. Feby. 14, W. C. May 16, „	6.
869	Feby. 14, „	88.
870	W. C. „ 21, C. C. March 27, „	6, 29, 33, 104, 114, 116, Supplement Nos. 10, 11, 21.
871	C. C. Feby. 21, W. C. March 21, 1834.	78.
872	W. C. Feby. 21, C. C. Octr. 24, „	68, 75.
873	Feby. 28, „	48.
874	W. C. March 14, C. C. April 4, „	114.
875	C. C. March 21, W. C. „ 7, „	31.
876	W. C. „ 26, C. C. April 18, „	61.
877	March 27, „	40.
878	W. C. April 11, C. C. May 2, „	28.
879	C. C. April 11, W. C. May 2, „	19, 66, 102.
880	W. C. April 11, C. C. May 2, „	92, 119.
881	C. C. April 18, W. C. May 16, „	41, 108.
882	C. C. April 18, W. C. May 16, „	42, 72, 109.
883	W. C. April 18, C. C. May 2, „	11, 25.
884	W. C. May 16, C. C. June 13, „	122.
885	May 23, „	10.
886	C. C. June 13, W. C. July 11, „	31.
887	W. C. June 27, C. C. July 18, „	59, 110.
888	C. C. „ 4, W. C. „ 25, „	10.
889	W. C. „ 4, C. C. Aug. 1, „	126.
890	C. C. July 11, W. C. Sept. 5, „	37, 52.

No.	Date of Construction.	Page of Abstract Index.
891	W. C. July 18, C. C. Sept. 5, 1834,	45.
892	W. C. July 25, C. C. Aug. 22, „	17, 19.
893	W. C. July 4, C. C. Aug. 1, „	10.
894	W. C. July 25, C. C. Aug. 22, „	30.
895	W. C. Sept. 5, C. C. „ 26, „	9, 20, 93.
896	W. C. „ 5, C. C. Octr. 3, „	95.
897	Sept. 5, „	19, 38, 94.
898	„ 5, „	70.
899	W. C. „ 12, C. C. Octr. 3, „	41.
900	Sept. 12, „	36, 56.
901	W. C. Sept. 26, C. C. Octr. 24, „	85.
902	W. C. Sept 26, C. C. Octr. 24, „	37, 61.
903	C. C. „ 3, W. C. Novr. 14, „	33, 72.
904	C. C. Octr. 3, W. C. Novr. 7, „	81.
905	Octr. 3, „	97.
906	W. C. „ 10, C. C. „ 24, „	22, 51.
907	W. C. „ 10, C. C. Novr. 7, „	56, 72, 87.
908	W. C. Octr. 10, C. C. Novr. 7, „	65.
909	W. C Octr. 17, C. C. Novr. 14, „	51, 120.
910	Octr. 17, „	122.
911	„ 17, „	22, 51.
912	„ 24, „	47.
913	C. C. Octr. 31, W. C. Novr. 28, 1834,	125.
914	W. C. July 25, C. C. Novr. 7, „	63, 75.
915	W. C. „ 21, C. C. Decr. 5, „	79.
916	C. C. Novr. 21, W. C. Decr. 19, „	13.
917	W. C Novr. 28, „ C. C. Jany. 2, 1835,	13.
918	C. C. Novr. 28, W. C. Decr. 26, 1834,	20, 67.
919	W. C. „ 5, C. C. „ 26, „	27, 66, 81.
920	„ 5, „	108.
921	C. C. „ 12, „ W. C Jany. 23, 1835,	38.
922	W. C. Decr. 19, 1834, C. C. Jany. 26, 1835,	81.
923	W C Decr. 19, 1834, C. C. Jany. 16, 1835,	74.
924	C. C. Decr. 26, 1834, W. C. Jany. 23, 1835,	45, 125.
925	W. C. „ 9, C. C. March 27, „	22.
926	W. C. Jany. 16, C. C. „ 31, „	43.
927	W. C. „ 16, C. C. Feby. 6, „	50.
928	Jany. 16, „	39, 48.
929	„ 20, „	43.
930	C. C. „ 23, W. C. Feby. 27, „	100.
931	Jany. 31, „	26, 27.
932	Feby. 6, „	15, 35, 41.
933	C. C. „ 20, W. C. March 20, „	38.

No.	Date of Construction.	Page of Abstract Index.
934	{C. C. Feby. 20, / W. C. March 13,} 1835,	48.
935	{W. C. July 31, 1834, / C. C. {Aug. 22, / Feby. 22,} 1835,}	39.
936	{W. C. March 6, / C. C. „ 27,} „	9.
937	„ 20, „	47.
938	„ 20, „	29.
939	„ 20, „	110.
940	{W. C. Jany. 28, / C. C. March 27,} „	57, 73.
941	{W. C. April 3, / C. C. „ 24,} „	57.
942	„ 3, „	80.
943	{W. C. Feby. 6, / Govt. April 7,} „	54.
944	{W. C. April 10, / C. C. May 1,} „	28.
945	{W. C. April 24, / C. C. May 29,} „	81.
946	{W. C. April 24, / C. C. May 22,} „	20, 102.
947	{W. C. „ 1, / C. C. „ 22,} „	89, 89.
948	„ 1, „	47.
949	{C. C. „ 1, / W. C. June 5,} „	81, 89.
950	{C. C. May 1, / W. C. July 10,} „	65, 66, 67.
951	{W. C. May 8, / C. C. „ 22,} „	77, 100, 102.
952	{W. C. „ 15, / C. C. July 9,} „	75.
953	{W. C. May 8, / C. C. „ 22,} „	69.
954	{W. C. „ 29, / C. C. June 26,} „	63, 75.
955	{C. C. May 29, / W. C. June 15,} 1835,	110.
956	{W. C. „ 12, / C. C. July 10,} „	79.
957	{W. C. June 17, / C. C. Aug. 7,} „	70, 114.
958	{W. C. June 19, / C. C. July 17} „	13, 77.
959	June 19, „	42, 109.
960	„ 19, „	13, 125.
961	{W. C. „ 26, / C. C. Aug. 7,} „	7, 116.
962	{W. C. June 26, / C. C. July 31,} „	37, 50, 68.
963	{C. C. June 26, / W. C. July 31,} „	8, 108.
964	{W. C. „ 10, / C. C. „ 31,} „	39, 42, 125.
965	{W. C. „ 17, / C. C. Aug. 7,} „	70, 80.
966	{C. C. July 17, / W. C. Aug. 28,} „	55, 66.
967	July 17, „	35, 77.
968	{W. C. „ 31, / C. C. Aug. 21,} „	20.
969	July 31, „	79.
970	{C. C. Aug. 7, / W. C. Sept. 4,} „	1, 111, 112.
971	{W. C. Aug. 7, / C. C. „ 28,} „	24.
972	{W. C. „ 7, / C. C. Sept. 4,} „	3, 41.
973	{W. C. Aug. 7, / C. C. Sept. 25,} „	16, 126.
974	Aug. 7, „	70.
975	„ 7, „	22, 109.
976	{W. C. „ 7, / C. C. Sept. 18,} „	50.

No.	Date of Construction.	Page of Abstract Index.
977	Aug. 28, 1835,	94.
978	W. C. Sept. 11, / C. C. Octr. 9, „	36, 47.
979	C. C. Sept. 11, / W. C. Octr. 2, „	28, 51, 68.
980	W. C. Sept. 16, / C. C. Octr. 23, „	80.
981	C. C. Sept. 16, „ / W. C. March 11, 1836,	99.
982	Octr. 16, 1835,	105.
983	W. C. „ 16, / C. C. Novr. 13, „	35.
984	W. C. Octr. 30, / C. C. Novr. 20, „	111.
985	W. C. Octr. 30, / C. C. Decr. 18, „	54, 119.
986	W. C. Novr. 6, / C. C. Decr. 4, „	57, 109.
987	W. C. Sept. 25, / Govt. Novr. 17, „	99, 114.
988	W. C. Novr. 20, / C. C. Decr. 18, „	83.
989	C. C. Novr. 28, / W. C. Decr. 26, „	20, 67.
990	C. C. Decr. 11, „ / W. C. Jany. 2, 1836.	67, 85.
991	C. C. Decr. 11, 1835, / W. C. Jany. 8, 1836,	15, 79.
992	Decr. 18, 1835,	60.
993	W. C. „ 24, „ / C. C. Jany. 22, 1836,	25.
994	W. C. Decr. 24, 1835, / C. C. Jany. 22, 1836,	16.
995	C. C. Decr. 24, 1835, / W. C. Jany. 22, 1836,	30, 89.
996	C. C. „ 2, / W. C. „ 29, „	13, 20.
997	C. C. Jany. 2, / W. C. „ 22, 1836,	6.
998	C. C. „ 8, / W. C. Feby. 5, „	16, 36.
999	C. C. Jany. 8, / W. C. Feby. 5, „	41, 107.
1000	W. C. „ 5, / C. C. March 11, „	10, 39, 40.
1001	C. C. Feby. 12, / W. C. March 4, „	100.
1002	W. C. „ 4, / C. C. „ 25, „	15, 78.
1003	„ 18, „	5, 8, 68, 119.
1004	„ 25, „	4, 94.
1005	W. C. April 8, / C. C. July 8, „	53.
1006	W. C. April 15, / C. C. May 20, „	31, 70.
1007	C. C. April 22, / W. C. May 18, „	47.
1008	W. C. „ 19, / C. C. June 17, „	20, 126.
1009	C. C. May 20, / W. C. June 10, „	81, 110.
1010	C. C. „ 3, / W. C. „ 24, „	50, 55.
1011	W. C. „ 10, / C. C. July 1, „	24, 25.
1012	C. C. June 10, / W. C. „ 20, „	86.
1013	W. C. „ 17, / C. C. July 1, „	97.
1014	W. C. June 17, / C. C. July 8, „	73.
1015	C. C. June 17, / W. C. July 18, „	97.
1016	W. C. June 17, / C. C. July 16, „	98.

No.	Date of Construction.	Page of Abstract Index.
1017	C. C. June 24, / W. C. July 15, 1836,	107.
1018	C. C. June 24, / W. C. July 15, "	20.
1019	W. C. " 1, / C. C. " 29, "	10.
1020	C. C. " 1, / W. C. " 22, "	42, 67, 89, 119.
1021	" 8, "	17.
1022	C. C. " 8, / W. C. " 15, "	89, 110.
1023	C. C. " 8, / W. C. Aug. 5, "	89, 104.
1024	C. C. July 8, / W. C. Aug. 12, "	38.
1025	W. C. July 8, / C. C. Aug. 4, "	4.
1026	W. C. June 17, / C. C. July 28, "	2.
1027	W. C. " 15, / C. C. " 29, "	40.
1028	C. C. " 29, / W. C. Aug. 19, "	80, 102.
1029	C. C. July 29, / W. C. Aug. 19, "	31.
1030	C. C. July 29, / W. C. Sept. 2, "	22, 23, 96.
1031	C. C. Aug. 5, / W. C. " 26, "	57, 64.
1032	W. C. July 22, / C. C. Aug. 12, "	4, 81.
1033	" 12, "	57, 103.
1034	C. C. " 12, / W. C. Sept. 2, "	24.
1035	Aug. 12, "	35.
Ditto	Jan. 27, 1837,	33, 124.
1036	C. C. Aug. 12, / W. C. Sept. 9, 1836,	80.
1037	C. C. Aug. 12, / W. C. Sept. 2, 1836,	89, 104.
1038	C. C. Aug. 19, / W. C. Sept. 16, "	16, 38.
1039	C. C. Aug. 19, / W. C. Sept. 16, "	13, 20.
1040	Aug. 5, "	79.
1041	W. C. " 5, / C. C. Sept. 16, "	2, 124.
1042	C. C. Aug. 19, / W. C. Sept. 9, "	53.
1043	C. C. " 2, / W. C. " 30, "	52.
1044	W. C. " 9, / C. C. Octr. 14, "	62.
1045	C. C. Sept. 9, / W. C. " 23, "	24.
1046	C. C. " 16, / W. C. " 2, "	114.
1047	C. C. " 23, / W. C. Octr. 14, "	114.
1048	C. C. Sept. 30, / W. C. Octr. 21, "	28, 51.
1049	W. C. Sept. 30, / C. C. Novr. 11, "	16.
1050	W. C. Sept. 2, / C. C. " 30, "	67.
1051	C. C. " 16, / Govt. Octr. 10, "	36, 59, 77.
1052	W. C. " 14, / C. C. Novr. 11, "	85.
1053	C. C. Octr. 14, / W. C. Novr. 4, "	125.
1054	C. C. Octr. 14, / W. C. Novr. 4, "	68.
1055	W. C. Octr. 17, / C. C. Novr. 25, "	8.
1056	Octr. 21, "	39.

No.	Date of Construction.	Page of Abstract Index
1057	C C Novr 11, / W C „ 25, 1836,	28, 105
1058	C C Octr 21, / W C Novr 18, „	105, 116
1059	Decr 2,	40, 54
1060	„ 9,	59
1061	C C „ 9, / W. C. „ 23, „	45
1062	C C „ 16, / W C „ 30, „	49.
1063	„ 23,	81
1064	W C Jany 6, / C C „ 27, 1837,	14
1065	C C Decr 16, 1836, / W C Jany 6, 1837,	36, 73
1066	W C „ 13, / C C Feby 17, „	4, 41.
1067	C C Decr 30, 1836, / W C Jany 13, 1837,	99
1068	C C „ 20, / W C Feby 3, „	18, 114
1069	Jany 27, „	23, 65, 73
1070	C C „ 27, / W C Feby 10, „	95
1071	W C „ 3, / C C March 3, „	33, 57, 109
1072	W C Feby 3, / C C March 3, „	59, 103
1073	C C Feby 10, / W C „ 24, „	104
1074	W C Jany 27, / C C Feby 10, „	45, 122
1075	W C Jany 13, / C C Feby 21, „	20, 75, 78
1076	W C „ 10, / C C „ 24, „	28, 99
1077	W C March 10, / C C „ 25, „	38
1078	C C March 10, / W C „ 31, 1837,	4, 73
1079	„ 10, „	13, 99
1080	C C „ 16, / W C „ 31, „	16, 103
1081	W C „ 17, / C C April 21 „	57.
1082	W C March 31, / C C April 14, „	95
1083	C C March 31, / W C April 21, „	85
1084	March 31, „	83
1085	W C April 14 / C C May 12, „	125
1086	C C April 14, / W C „ 28, „	50, 84
1087	W C March 23, / C C April 21, „	14, 112
1088	C C „ 21, / W C May 12, „	116
1089	April 28, „	10
1090	C C May 19, / W C June 2, „	17, 40
1091	W C April 28, / C C May 26, „	33
1092	W C June 2, / C C „ 23, „	49, 66
1093	„ 9, „	116
1094	C C „ 23, / W C Aug 11, „	20, 42
1095	C C June 30, / W C July 21, „	26, 50
1096	„ 7, „	42, 55
1097	W C „ 8, / C C Aug 4, „	81
1098	C C July 14, / W C Aug 4, „	25, 36, 61

No.	Date of Construction.	Page of Abstract Index.
1099	C. C. July 21, / W. C. Aug. 18, 1837,	45.
1100	C. C. July 21, / W. C. Aug. 25, "	109.
1101	W. C. " 4, / C. C. " 25, "	114.
1102	C. C. " 18, / W. C. Sept. 15, "	4, 8.
1103	C. C. Aug. 18, / W. C. Sept. 22, "	13.
1104	" 1, "	24, 109.
1105	W. C. " 6, / C. C. " 29, "	86, 104.
1106	W. C. " 8, / C. C. Octr. 6, "	20, 84.
1107	C. C. Sept. 8, / W. C. " 29, "	3.
1108	C. C. " 8, / W. C. " 22, "	50.
1109	W. C. " 15, / C. C. " 27, "	89.
1110	C. C. Octr. 20, / Govt. Novr. 21, "	20.
1111	W. C. Sept. 22, / C. C. Octr. 27, "	42, 116.
1112	Novr. 10, "	46, 89.
1113	W. C. " 17, / C. C. Jany. 1, 1838, "	8.
1114	W. C. Novr. 24, / C. C. Decr. 8, 1837,	17, 50.
1115	W. C. Novr. 24, / C. C. Decr. 8, "	103.
1116	" 8, "	46, 114.
1117	W. C. " 8, / C. C. Jany. 5, 1838, "	2, 124.
1118	W. C. Decr. 15, / C. C. Jany. 5, 1837, 1838,	89, 115.
1119	C. C. Decr. 15, / W. C. " 29, 1837,	62.
1120	C. C. " 15, / W. C. Jany. 12, " 1838,	42. 111.
1121	W. C. Decr. 29, 1837, / C. C. Feby. 2, 1838,	113.
1122	C. C. Decr. 29, 1837, / W. C. Jany. 19, 1838,	23.

VOL. III.

No.	Date of Construction.	Page of Abstract Index.
1123	Decr. 29, 1837,	105.
1124	" 29, "	34.
1125	Jany. 22, 1838,	121.
1126	" 26, "	29, 124.
1127	Feby. 2, "	5, 105.
1128	" 5, "	20, 21.
1129	" 9, "	8, 40, 77.
1130	" 9, "	8, 49.
1131	" 16, "	74.
1132	W. C. " 16, / C. C. March 9, "	81, 116.
1133	Feby. 16, "	41.
1134	C. C. March 2, / W. C. Feby. 16, "	57, 87.
1135	March 2, "	43, 107.
1136	" 9, "	22, 106.
1137	C. C. " 9, / W. C. " 24, "	2, 124.
1138	" 16, "	8, 43.
1139	" 23, "	7, 29.
1140	W. C. " 2, / C. C. " 23, "	70.
1141	" 23, "	36, 60.
1142	" 23, "	51, 57, 109.

No.	Date of Construction.	Page of Abstract Index.
1143	W. C. March 21, / C. C. April 6, 1838,	114.
1144	„ 6, „	42, 57, 120.
1145	W. C. „ 6, / C. C. „ 27, „	57.
1146	„ 20, „	31.
1147	„ 27, „	113.
1148	W. C. „ 27, / C. C. May 11, „	9, 40, 89.
1149	W. C. April 27, / C. C. May 18, „	86, 89, 90.
1150	C. C. April 27, / W. C. May 11, „	43, 126.
1151	April 27, „	18, 113, 114.
1152	May 11, „	51.
1153	„ 11, „	10.
1154	June 1, „	8.
1155	W. C. „ 22, / C. C. July 13, „	26.
1156	June 29, „	18, 43, 59.
1157	W. C. July 6, / C. C. Aug. 3, „	31, 57.
1158	W. C. June 22, / C. C. July 13, „	77, 125, 126.
1159	„ 20, „	6.
1160	W. C. „ 27, / C. C. Aug. 17, „	69, 73, 90, 119.
1161	„ 3, „	111, 112.
1162	„ 3, „	34, 109, 120.
1163	W. C. July 13, / C. C. Aug. 3, „	47, 60, 124.
1164	W. C. July 27, / C. C. Aug. 10, „	31.
1165	W. C. July 20, / C. C. Aug. 17, „	21, 102.
1166	W. C. July 20, / C. C. Aug. 17, „	37, 125.
1167	Aug. 17, 1838,	59.
1168	„ 17, „	86, 90.
1169	„ 31, „	57, 109.
1170	Sept. 7, „	30, 49.
1171	W. C. Aug. 10, / C. C. Sept. 7, „	7, 105.
1172	„ 14, „	55.
1173	W. C. Aug. 24, / C. C. Sept. 14, „	2, 124.
1174	W. C. Aug. 31, / C. C. Sept. 21, „	87, 94.
1175	W. C. Aug. 31, / C. C. Sept. 21, „	37, 61.
1176	W. C. Aug. 31, / C. C. Sept. 21, „	16, 43, 87.
1177	W. C. „ 14, / C. C. Octr. 5, „	25, 84.
1178	C. C. Sept. 7, / W. C. Octr. 5, „	42.
1179	W. C. „ 12, / C. C. Novr. 2, „	71.
1180	Octr. 19, „	108, 109.
1181	„ 26, „	21, 102.
1182	Novr. 2, „	50, 114.
1183	W. C. Octr. 12, / C. C. Novr. 9, „	26, 122.
1184	W. C. Octr. 12, / C. C. Novr. 9, „	26, 34.
1185	W. C. Octr. 19, / C. C. Novr. 19, „	57, 119.
1186	W. C. „ 2, / C. C. „ 16, „	81.
1187	„ 30, „	39.
1188	W. C. Decr. 7, / C. C. „ 28, „	6.
1189	„ 14, „	61.

No.	Date of Construction.	Page of Abstract Index
1190	Dec 14, 1838,	26, 114
1191	„ 14, „	29
1192	W C „ 21, „ C C Jany 18, 1839,	21
1193	Decr 21, 1838,	21, 43
1194	„ 20, „	21
1195	W C „ 16, 1836 C C March 17, 1837,	108
1196	C C Novr 18 W C Aug 26, 1836,	50
1197	C C Jany 4, W C „ 18, 1839,	51, 120
1198	W C „ 11, C C „ 25, „	51, 109
1199	W C „ 18, C. C. Feby 1 „	8
1200	C. C Jany 18, W C Feby 1, „	33, 88,
1201	C C „ 15 W C March 8, „	21, 43
1202	C C Feby 15 W C March 8, „	30, 90
1203	C C „ 15, W C „ 30, „	24, 124
1204	W C „ 15, C C April 1, „	43, 87
1205	W C March 15, C C April 12, „	52, 113, 114
1206	C C „ 1, W C „ 26, „	24, 109
1207	C C „ 1 W C „ 26, „	82, 114
1208	C C „ 1, W C June 21, „	61
1209	C C April 12, W C May 3, „	126
1210	W C April 26 C C May 10, „	3
1211	W C. April 19 C C May 10, 1839,	107
1212	W. C April 19, C C July 12 „	37.
1213	W C May 3, C. C „ 17, „	53
1214	C C „ 3, W. C „ 24 „	43
1215	C C „ 10, Govt Aug 1, „	34, 42
1216	W C May 17, C C June 7, „	103
1217	W C May 17 C C June 21 „	82
1218	W C May 24, C C June 21, „	97.
1219	C C May 31 W C June 21 „	98
1220	W C May 31 C C July 5, „	61
1221	W C May 31 C C July 5, „	23, 45
1222	W C June 3, C C July 5, „	21
1223	W C June 7, C C July 12, „	69, 90
1224	W C June 14, C C July 12, „	14
1225	W C June 14 C C July 12, „	23, 45
1226	W C June 21, C C Aug 2, „	67, 90, 119.
1227	W C June 21, C C Aug 2, „	37
1228	W C June 28, C C Aug 2, „	Supplement Nos 8, 22
1229	W C July 5, C C Aug 2, „	82, 105

No.	Date of Construction.	Page of Abstract Index.
1230	W. C. July 5, / C. C. Aug. 2, 1839,	97.
1231	C. C. July 12, / W. C. Aug. 9, „	52.
1232	C. C. July 12, / W. C. Novr. 22, „	2.
1233	C. C. July 19, / W. C. Aug. 9, „	14.
1234	C. C. July 19, / W. C. Aug. 9, „	52.
1235	W. C. July 19, / C. C. Aug. 9, „	67, 90, 119.
1236	W. C. July 19, / C. C. Aug. 16, „	76.
1237	W. C. July 19, / C. C. Aug. 16, „	14, 117.
1238	W. C. July 19, / C. C. Aug. 16, „	14, 33.
1239	C. C. July 19, / W. C. Sept. 20, „	58, 109.
1240	W. C. Aug. 2, / C. C. „ 30, „	2, 108.
1241	W. C. „ 16, / C. C. Sept. 20, „	59, 76.
1242	W. C. Aug. 16, / C. C. Sept. 20, „	16.
1243	C. C. Aug. 16, / Govt. Feby. 25, „ 1840,	94.
1244	W. C. Aug. 31, / C. C. Octr. 4, 1839,	Supplement No. 9.
1245	C. C. Aug. 23, / W. C. Sept. 13, „	21, 99.
1246	C. C. Aug. 23, / W. C. Decr. 6, „	34.
1247	C. C. Sept. 6, / W. C. „ 27, „	58, 59, 126.
1248	W. C. „ 6, / C. C. Jany. 3, „ 1840,	37.
1249	C. C. Sept. 18, / W. C. Octr. 4, 1839,	62, 104.
1250	C. C. Sept. 13, „ / Govt. Jany. 16, 1840,	82.
1251	W. C. Sept. 20, / C. C. Novr. 1, 1839,	1, 27.
1252	C. C. Sept. 27, / W. C. Octr. 31, „	21.
1253	C. C. „ 4, / W. C. „ 31, „	75.
1254	C. C. „ 4, / W. C. Novr. 8, „	82.
1255	C. C. Octr. 18, / W. C. Novr. 22, „	69, 103.
1256	W. C. Octr. 31, „ / Govt. March 10, 1840,	24.
1257	Novr. 1, 1839,	27, 66.
1258	C. C. „ 1, / W. C. Decr. 6, „	82.
1259	C. C. Novr. 1, / W. C. Decr. 6, „	67, 95.
1260	W. C. Novr. 1, „ / Govt. Jany. 16, 1840,	Supplement No. 25.
1261	W. C. Decr. 6, 1839, / C. C. Jany. 3, 1840,	90, 100.
1262	W. C. Novr. 16, 1839, / C. C. Jany. 3, 1840,	67, 103.
1263	W. C. Novr. 22, 1839, / C. C. Jany. 3, 1840,	87.
1264	W. C. Decr. 6, 1839, / C. C. Jany. 13, 1840,	42.
1265	W. C. Decr. 6, 1839, / Govt. March 10, 1840,	90.
1266	C. C. Aug. 9, / W. C. Sept. 6, 1839,	37.
1267	C. C. Octr. 4, / W. C. „ 31, „	24.
1268	W. C. Decr. 20, „ / C. C. March 20, 1840,	61, 63.

No.	Date of Construction.	Page of Abstract Index.
1269	W. C. Jany. 3, C. C. Feby. 7, 1840,	29, 105.
1270	C. C. Jany. 10, W. C. Feby. 28, „	97.
1271	W. C. Jany. 16, C. C. Feby. 2, „	4.
1272	C. C. Jany. 31, W. C. June 19, „	114.
1273	C. C. Feby. 28, W. C. March 27, „	15, 23.
1274	W. C. Feby. 28, C. C. March 27, „	59, 123.
1275	W. C. „ 6, C. C. April 3, „	63, 75.
1276	C. C. March 20, W. C. April 24, „	10.
1277	C. C. „ 10, W. C. „ 24, „	27, 67.
1278	W. C. June 5, C. C. „ 26, „	69, 116.
1279	W. C. „ 19, C. C. Aug. 14, „	113.
1280	W. C. June 26, C. C. Aug. 7, „	24.
1281	July 17, „	126.
1282	C. C. Aug. 7, W. C. „ 26, „	5, 90.
1283	C. C. „ 7, W. C. Sept. 4, „	13.
1284	W. C. Aug. 7, C. C. Sept. 4, „	90.
1285	W. C. Aug. 7, C. C. Sept. 7, „	82, 90.
1286	C. C. Aug. 14, W. C. Sept. 4, „	51.
1287	C. C. Octr. 23, W. C. Novr. 13, „	64, 116.
1288	W. C. Octr. 30, C. C. Novr. 20, „	88.
1289	W. C. Novr. 28, C. C. Decr. 10, 1840,	86, 92.
1290	C. C. Jany. 8, W. C. Feby. 8, 1841,	59.
1291	W. C. „ 13, C. C. March 19, „	61, 77.
1292	C. C. March 26, W. C. April 10, „	10, 90.
1293	W. C. „ 30, C. C. July 30, „	67.
1294	C. C. May 14, W. C. „ 28, „	90, 105.
1295	C. C. „ 21, W. C. June 18, „	67.
1296	W. C. May 21, C. C. June 18, „	36, 88.
1297	C. C. May 28, W. C. June 18, „	82, 86.
1298	C. C. May 28, W. C. June 22, „	127.
1299	C. C. „ 4, W. C. „ 25, „	41.
1300	C. C. „ 18, W. C. July 9, „	67.
1301	W. C. June 25, C. C. July 16, „	79.
1302	W. C. „ 2, C. C. „ 30, „	26.
1303	C. C. „ 16, W. C. Aug. 6, „	80.
1304	C. C. July 16, W. C. Aug. 13, „	66.
1305	C. C. July 16, W. C. Aug. 20, „	42, 59.
1306	W. C. July 20, C. C. Aug. 20, „	113.
1307	C. C. July 30, W. C. Aug. 20, „	58.

No.	Date of Construction.	Page of Abstract Index.
1308	W. C. Aug. 28, C. C. Sept. 17, 1841,	68, 121.
1309	W. C. „ 15, C. C. Octr. 22, „	82, 86.
1310	W. C. Sept. 24, C. C. Octr. 22, „	49.
1311	W. C. „ 15, C. C. Novr. 5, „	49, 126.
1312	C. C. Octr. 22, W. C. Novr. 26, „	31.
1313	W. C. Decr. 3, C. C. „ 31, „	82.
1314	C. C. „ 10, „ W. C. Jany. 10, 1842,	82.
1315	C. C. Decr. 31, 1841, W. C. Jany. 7, 1842,	29.
1316	W. C. „ 14, C. C. Feby. 11, „	27.
1317	W. C. Jany. 18, C. C. Feby. 11, „	88.
1318	W. C. Jany. 28, C. C. Feby. 11, „	58.
1319	C. C. „ 11, W. C. March 4, „	26, 27, 118.
1320	C. C. Feby. 11, W. C. March 4, „	10.
1321	W. C. Feby. 18, C. C. April 8, „	68.
1322	W. C. March 18, C. C. April 1, „	58.
1323	W. C. March 26, C. C. April 8, „	5.
1324	W. C. March 21, C. C. April 8, „	3.
1325	C. C. Feby. 11, W. C. March 11, „	43, 60, 91.
1326	W. C. Feby. 12, C. C. March 26, „	52, 58, 109.
1327	W. C. Feby. 18, C. C. March 4, 1842,	29.
1328	C. C. „ 1, W. C. April 15, „	87, 110.
1329	C. C. March 18, W. C. May 27, „	125.
1330	C. C. March 26, W. C. May 20, „	58.
1331	C. C. April 1, W. C. „ 15, „	112.
1332	C. C. „ 1, W. C. „ 28, „	58.
1333	W. C. „ 15, C. C. May 27, „	32.
1334	W. C. April 15, C. C. May 27, „	29.
1335	W. C. April 28, C. C. May 20, „	61.
1336	C. C. „ 13, W. C. „ 27, „	5.
1337	C. C. „ 13, W. C. June 3, „	Supplement Nos. 3, 4, 5.
1338	C. C. May 13, W. C. June 10, „	122.
1339	W. C. May 18, C. C. June 10, „	29.
1340	W. C. May 18, C. C. June 17, „	115.
1341	W. C. May 20, C. C. June 17, „	41.
1342	C. C. March 18, W. C. „ 29, „	54.
1343	C. C. May 20, W. C. June 17, „	78.
1344	W. C. „ 20, C. C. July 8, „	11, 32.
1345	C. C. May 20, W. C. July 1, „	1.

No.	Date of Construction.	Page of Abstract Index.
1346	C. C. June 24, / W. C. Aug. 2, 1842,	Supplement Nos. 4, 29, 37.
1347	C. C. June 24, / W. C. Aug. 2, „	18, 32.
1348	W. C. July 1, / C. C. „ 22, „	37.
1349	W. C. „ 1, / C. C. „ 29, „	32.
1350	C. C. „ 15, / W. C. Aug. 5, „	39.
1351	C. C. July 22, / W. C. Aug. 12, „	97.
1352	W. C. July 25, / C. C. Aug. 19, „	1.
1353	W. C. July 25, / C. C. Aug. 26, „	58.
1354	W. C. „ 5, / C. C. „ 25, „	15.
1355	W. C. „ 5, / C. C. „ 26, „	78.
1356	C. C. July 22, / W. C. Aug. 19, „	82.
1357	C. C. „ 5, / W. C. Sept. 2, „	49.
1358	W. C. Aug. 5, / C. C. Sept. 2, „	5.
1359	C. C. Aug. 5, / W. C. Sept. 2, „	32, 49.
1360	W. C. Aug. 5, / C. C. Sept. 9, „	28, 86.
1361	C. C. Aug. 19, / W. C. Sept. 9, 1842,	58.
1362	W. C. Aug. 26, / C. C. Sept. 9, „	83, 91.
1363	W. C. Aug. 24, / C. C. Sept. 23, „	121.
1364	C. C. „ 2, / W. C. „ 23, „	88.
1365	W. C. Novr. 19, / C. C. Decr. 9, „	87, 94.
1366	W. C. „ 2, / C. C. „ 23, „	32.
1367	W. C. „ 22, „ / C. C. Jany. 20, 1843.	92.
1368	W. C. Decr. 2, / C. C. „ 23, 1842,	29.
1369	W. C. Jany. 27, / C. C. Feby. 10, 1843,	21.
1370	W. C. March 17, / C. C. „ 31, „	58.
1371	W. C. Novr. 7, 1842, / C C. March 17, 1843,	21.
1372	C. C. Jany. 20, / W. C. Feby. 6, „	117.
1373	C. C. Jany. 27, / W. C. Feby. 15, „	66.
1374	C. C. Jany. 27, / W. C. Feby. 17, „	107.
1375	W. C. Jany. 31, / C. C. Feby. 24, „	105.

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